

Zilla Court
Decisions
Case-No- 8 (1846)



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ZILLAH BACKERGUNGE.

THE 4TH DECEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 8 of 21st February 1846.

Appeal from the decision of Mouluwee Mahomed Kuleem, Principal Sudder Ameen, dated 24th January 1846.

Deenonath Chowdree and Kulunder Khan, Appellants,
(Defendants,)

versus

Lala Mitrojeet Sing, Respondent, (Plaintiff.)

IN this case plaintiff, as proprietor of a ten annas share of an estate/ named after Lala Chet Sing, in pergunnah Syedpoor, instituted a suit on the 10th April 1845, to recover arrears of rent with interest on the same, on account of a talook named after Kaleechurn Sumadar. The rent which plaintiff described as a "kuboolah juma," that is, open to formal adjustment and settlement, he charged at the rate of Sicca rupees 153-14-11-3 for the entire talook: and giving credit for certain payments made by the talookdars, he claimed Company's rupees 483-8-2-17, besides rupees 277-3-9-18, interest for the years 1239 to 1251 inclusive. Not that any portion of the principal balance was due for the year 1239, or even for the year 1240, for plaintiff presented a running account which he kept with the talookdars, in which, while the general balance was brought down from year to year, such payments as were made by the talookdars were from time to time deducted: but especially for the adjustment of his interest he dated his cause of action from the year 1240, at which time, failing any formal kistbundee making the rents of 1239 payable within the year, he rested his claim for the revenue of that year upon the arrear due at its close. Thus he represented that at the termination of the year only could the unpaid rents of 1239 be considered in the language of the law *an arrear*, and that his action did not date beyond twelve years.

Deenonath Chowdree and Kulunder Khan, who professed to have acquired by right of purchase, at different dates, a fourteen annas interest in the talook, filed one answer: Ram Nidhee Samadar another. Ram Nidhee does not appeal from the decision passed in the lower court.

Deenonath and Kulunder Khan in answer stated that Mohesh-chunder, father of the former, purchased one-fourth of the talook in 1241; again a six anna share in 1244; and that Kulunder Khan purchased another fourth in 1250: they were willing to admit their liability for rent only from the dates of these purchases: they averred that they had paid such and such sums: they objected to the mode in which plaintiff carried payments of current rent to the liquidation of an old arrear; and farther seeing, as they said, that plaintiff from Aghun 1247 to the end of 1249, had taken the talook into his own hand and collected the rents from the under tenants, they resisted the demand made upon them. Moreover they maintained that the juma of the talook was Sicca rupees 153-12-15, and that this was not a "kuboolah" juma but fixed and determinate.

The principal sudder ameen, finding the accounts of the principal arrear claimed to be proved, and that defendants had failed to substantiate their objections, decreed the principal balance; disallowing interest upon grounds which are not very intelligible, namely, that the annual rent was not payable under a kistbundee, and that plaintiff had delayed in instituting the suit. Plaintiff himself has appealed separately to recover interest, and I have now only to consider the objection made by the present appellants to the payment of the principal.

First, then, they insist that respondent has forfeited his right to the arrear, from having attached the talook from Aghun 1247 to 1249: but I find that they had given very insufficient evidence of the attachment, and it is quite unnecessary to consider what are the legal consequences of such an act. They have filed four receipts purporting to be granted by plaintiff's sazawals, but in no case does the sum entered exceed one rupee, and in other respects they have failed to prove the point averred.

Again they allege that the action is barred inasmuch as respondent, (plaintiff,) traces his account back to 1232. But it appears to me respondent has dealt most fairly with them. He has given his accounts so far back as 1232, but this he has done for the purpose of shewing that in closing the account of the year 1238, there was a surplus of rupees 2-1-2-1, to be credited on account of the following year 1239. Respondent has shown the sums received by him for the period in dispute item by item: and if, as it is the purpose of appellants to insist, respondent irregularly carried to an *old* account sums which were paid as *current* rent, it was the business of appellants to prove that respondent had acted contrary to the conditions of the transactions referred to. Appellants for instance should have filed receipts to shew that the zemindar had accepted payment, on account of any given year, of rent which in the prosecution of this action he credits on account of one or more years preceding. But such receipts they have withheld; whereas a few

receipts for small sums which they have produced shew, I think, clearly that the account between the talookdars and zemindar was an open one.

Moreover it is clear to me that the appellants, Deenonath and Kulunder Khan, are, jointly with whosoever may have a share in the talook, liable for the whole arrear. They do not profess to have taken any steps which should be the means of absolving them from any liability but that attaching to their respective shares.

The arrear claimed I therefore consider due, but it should be calculated, I think, rather at the rate of Sicca rupees 153-12-15, than at rupees 153-14-11-3, which the plaintiff, (respondent,) has given no evidence for. And I need only add that the opinion, which the principal sudder ameen appears to have expressed in favor of the assertion of plaintiff that the juma was "kuboolah," is quite superfluous. This point was not at issue: and the determination of this suit cannot affect the rights of either party on that head. All costs will be charged to these appellants, so far as this appeal is concerned; those of the lower court to defendants.

THE 4TH DECEMBER, 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 9 of 22d February 1846.

Appeal from the decision of Moulovee Mahomed Kuleem, Principal Sudder Ameen, dated 24th January 1846.

Lala Mitrojeet Sing, Appellant, (Plaintiff) . .

versus

Ramdayal Sumadar and others, Respondents, (Defendants.)

THE nature of the suit between these parties has been described in the appeal No. 8, this day disposed of. The appellant, Lala Mitrojeet Sing, had sued to recover interest, besides principal, from the year 1240 to 1251, on account of arrears of rent due by these respondents, talookdars under the zemindaree of which he had a ten annas share.

The principal sudder ameen refused interest because no kistbundee had been executed between the parties. If the plaintiff had claimed interest within the year on account of current rent, such an argument would have been good; but on the contrary, plaintiff charged interest only from the close of the year, that is, upon bakaya arrears. The charge of interest is not made upon current instalments: but upon the outstanding balance of the year, and clearly there being or not being a kistbundee is beside the question.

I do not think the other reason adduced by the principal sudder ameen is of more moment. He refused interest from the delay of plaintiff in suing for the recovery of his balances. Possibly if a

long period had elapsed without any transaction occurring between the parties, there might be grounds for this opinion; but in the present instance it is clear that an open account was kept; that the talookdars never fairly met the liabilities they had incurred; and I think it is to be inferred that by hanging back they hoped to evade the payment of the older balances.

In some respects however the interest sued for is erroneously calculated. The account of arrears has been obviously an open one; but plaintiff crediting certain payments on account of current revenue has shewn a larger amount of bakaya balances chargeable with interest. With this exception I consider appellant entitled to interest, and I decree the appeal. All costs will be charged to respondents.

THE 8TH DECEMBER 1846.

PRESENT: A. SCONCE, JUDGE.

No. 18 of 24th December 1845.

Appeal from the decision of Moulovee Mahomed Kuleem, Principal Sudder Ameen, dated 25th November 1846.

Kebull Kishen Chokerbuttee, Appellant, (Plaintiff,)

versus

Neelkant Rae, Shibchunder Rae and others, Respondents,
(Defendants.)

PLAINTIFF, this appellant, professing to have purchased on the 20th Poos 1249, from certain of the defendants, Goluck Chunder Shah and others, a talook named Kishen Mungul Shah (or Rae), together with all the rights of the talookdars, the sellers, as attached thereto, and to have been put in possession of his purchase, averred that from the month of Aghun 1250, he was expelled from the talook by one Neelkant Rae, acting in collusion with the same parties who had already disposed of their rights to himself; and further that Neelkant Rae instigated the serburrakar of the zemindary to which this talook is subordinate, to institute two summary suits for rent, alleged to be due to the proprietors of a three-fourth share of the zemindary; that notwithstanding his (plaintiff's) opposition, the two suits were decreed, and that, for the purpose of enforcing the execution of these decrees, two portions of talook (that is 9-7-3-1½ and 2-12-0-1½ shares) corresponding with the claims of the respective zemindars, were sold. Plaintiff accordingly sued to quash the summary decrees and sales, and to recover possession of the whole talook.

In answer to the plaint, appeared on the one hand Shibchunder, the purchaser of the twelve annas share of the talook, to maintain his purchase; and on the other, Goluck Chunder Shah and others, the representatives of the talookdars.

The latter denied altogether the sale founded upon by plaintiff; and alleged that in Kartick 1250, they had farmed the talook to Neelkant Rae in the name of Chundee Pershad.

The principal sudder ameen, who disposed of the case in the first instance, believing that plaintiff has failed to prove his purchase, dismissed the suit. For somewhat similar reasons I dismiss the appeal.

This is a complex action. It requires from the plaintiff, (appellant,) very opposite and unconnected pleas. To prove his purchase is necessarily the first condition that entitles him to be heard. And if that were done, if his possession and purchase of the talook were admitted, he would still have to justify his failure in paying up the zemindar's balances.

In coming to the decision of the latter question, consideration would have to be given to several conflicting issues and interests: but, as I already intimated, plaintiff, (appellant,) has not proved his purchase to my satisfaction, and no other question but that need be entertained.

Witnesses have been adduced by plaintiff, (appellant,) to prove the payment of the purchase money, and the writing and delivery of the deed of sale, and also the registration of the kubahlah by a mookhtar. The depositions of these witnesses however appear to me unconnected and unsatisfactory. And it happens that two men who were also put down as witnesses, while they admit that they had been tampered with, deny altogether the transaction which they were required to attest.

I never attempt to conceal the doubts which I entertain when I come to pass a decision which I cannot avoid passing, in cases where obviously on one side or the other there has been exhibited most contemptible lying. A man's word ought to be the touchstone of truth: and he who verifies with it a lie is altogether unfit for the society of the world in which he lives.

I add from the circumstance brought out in this case that there are two points which *bona fide* purchasers of land would do well to attend to. The first is, if it be their desire to register their deeds, to have them attested before the register by the sellers in person. It is to be understood from the evidence adduced in this action that the talookdars, who are said to have made the sale, left Burisaul and proceeded to the plaintiff's house in the country for the purpose of completing the transaction: And it is to be inferred that they thence returned to Burisaul. Under such circumstances it seems a simple condition to require that the sellers of property should formally attest the genuineness of their deeds.

Again, though plaintiff professed to have been in possession of the talook nearly a year, he admitted that he did not formally record the transfer made in his favor in the books of the zemindars to whom the rent of three-fourths of it were due.

I accordingly dismiss the appeal, costs being payable by appellant.

THE 9TH DECEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 23 of 26th May 1846.

Appeal from the decision of Moulovee Mahomed Kuleem, Principal Sudder Ameen, dated 28th April 1846.

Ram Raja Dass and others, Appellants, (Defendants,)

versus

Joy Chunder Chund, Respondent, (Plaintiff.)

Joy Chunder Chund having sued to recover Sicca rupees 635, besides interest, being money lent by him to Ram Raja Das and others upon a bond granted by them on the 16th Jeit 1243, the principal sudder ameen found the claim to be good, and so decreed. Upon the merits of the case the appeal is preferred.

Appellants admit that a bond for Sicca rupees 635 was granted, but they assert that certain lands belonging to them and their co-sharers were farmed to respondent, and that out of the profits of this land the debt was to be and has been liquidated. And they further resist the claim of plaintiff by the plea that out of an ostensible loan of rupees 635, only rupees 500 had been paid.

In support of their averments appellants have nothing to offer but verbal evidence: and their case is still further weakened by the admission which they make that the farm was not given in the name of Joy Chunder, but of one Krishno Soonder, said to be a relative of his.

That a farm was granted to one with whom Joy Chunder is connected appears true; possibly Joy Chunder may have shewn himself to the tenants of the land as a party who himself had an interest in the farm: but that Joy Chunder himself touched the rents of the farm; or that *he only* enjoyed the rents; or if he enjoyed the profits of the farm, how much of these profits was available to liquidate his loan, we have absolutely no evidence.

Appellants assert that Sodashib, one of the parties to the debt, became gomashtah of the farm, and that he in collusion with respondent has made away with the engagements connected with the lease. But obviously this brings us no nearer to the means of determining the nature and the amount of the set-off, which they place against the bond. The very mode in which appellants assert that the gross assets of the land farmed, on coming into respondent's hands, were to be distributed, aggravates the insufficiency of their objections. Some portion was to go as rent to the superior; another for the farmer's expenses; another for his profits;

another for the personal support of the lessors ; and rupees 108 a year were to cover the loan. So that this very peculiar appropriation of the assets of the land which enlarges the field of dispute, renders the absence of substantial proof more remarkable and more fatal.

Lastly, the bond itself on the face of it bears every appearance of being simply a cash transaction.

I therefore dismiss the appeal, and affirm the decision of the lower court.

THE 9TH DECEMBER 1846.

PRESENT: A. SCONCE, JUDGE.

No. 9 of 21st January 1846.

Appeal from the decision of Baboo Gobind Chunder, Moonsiff of Kowkhalee, dated 23d December 1845.

Huro Soonderee, widow of Gobind Chunder, Appellant,
(Defendant,) .

versus

Deep Chunder Dutt, Respondent, (Plaintiff.)

ON the 26th ultimo, I disposed of two cases in which Gobind Chunder, the original defendant in this case, was a party. In one of these cases, one Pran Narain had sued Gobind Chunder and two of his female relations upon a bond for rupees 3000; and in the other he had sued Gobind Chunder alone upon a bond for rupees 100. I believed the claims to be fabricated, and so decreed.

This present respondent, Deep Chunder Dutt, as plaintiff, sued upon a bond dated 20th Chyt 1250, to recover rupees 100 lent, as he avers, to Gobind Chunder, besides interest.

Deep Chunder was a dependant of Pran Narain, the plaintiff in the other cases. It was in Pran Narain's house that the sum of rupees 100, is stated by Deep Chunder's witnesses to have been lent. They also state that Pran Narain himself promised to lend the money; that Gobind Chunder had gone to receive the money from him, and that in consequence of his manager not being at home he (Pran Narain) asked Deep Chunder to make the advance, undertaking to have it adjusted when he completed a heavier loan which he professed to be under negotiation.

This suit appears to me to be one of the series which Pran Narain brought to bear against and to beat down Gobind Chunder. Under all the circumstances deduced in the disputed transactions between the parties, I can place no confidence in this claim. I

must accordingly decree the appeal, and reverse the decree of the moonsiff who found for the plaintiff.

THE 17TH DECEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 16 of 20th April 1846.

Appeal from the decision of Moulovee Mahomed Kuleem, Principal Sudder Ameen, dated 20th March 1846.

Soorajmonce, Appellant, (Plaintiff,)

versus

Ram Sunker Day, Respondent, (Defendant.)

PLAINTIFF, this appellant, having sued upon a bond dated 1st Bhadon 1244, to recover a loan of Sicca rupees 200, besides interest, the principal sudder ameen, for these reasons, considered the claim untenable: he thought that the bond, from the appearance of it, was recently written on old paper; he considered the circumstance of the parties being at enmity, shewn especially in a petition presented in the foudaree court on the 7th Bysack 1247, as rendering the transaction itself improbable, for he thought that if the debt were genuine it should have been claimed sooner; and at the top of the paper on which the bond was written, as the name of the deity was omitted, he inferred that the deed must have been written subsequent to the orders issued by the Sudder Court on that subject in 1841.

I will not say that the reasons assigned by the principal sudder ameen are altogether satisfactory to my mind, but after a perusal of the whole case, I confirm his decree. I find that there were five men put down in the bond as witnesses, and that of these only two have been produced. A subpoena was issued for two others, and a return was made, at the instigation of plaintiff, that they were not to be found. Plaintiff took no other steps to produce these witnesses, and I observe that on a petition presented by her before the subpoena had been issued at all, she stated that one of the witnesses, Ramsoonder, was already in Burrisaul. In a suit such as this, which a plaintiff has put off for about eight years from the date of the transaction upon which it is founded, obviously not a part but the whole of the evidence alleged to be available, should be adduced, or cause shewn to the contrary. Even in appeal

Soorajmonee did not profess to offer more evidence than she has already given. The decree of the principal sudder ameen is accordingly confirmed, all costs being chargeable to appellant.

THE 18TH DECEMBER 1846.

PRESENT: A. SCONCE, JUDGE.

No. 21 of 27th April 1846.

Appeal from the decision of Moulovee Mahomed Kuleem, Principal Sudder Ameen, dated 30th March 1846.

Kishen Mohun Bonerjea, Appellant, (Plaintiff,)

versus

Kumla Kant Surbabbhoom, and Soorajmonee, wife of Bhugwan Chunder Nag, Respondents, (Defendants.)

In this case plaintiff sued upon a bond dated 15th Chyt 1245, to recover rupees 1000, besides interest. Soorajmonee being a minor, an answer was filed on her part by her sister-in-law Jumoonah. The bond was altogether denied. And it was urged that the transaction was in itself improbable, inasmuch as the plaintiff had not carried into execution a decree passed in his favor against Bhugwan Chunder on the 10th July 1835, (1242,) for a previous loan of rupees 100, that is two years before the date of the bond now litigated: and also that Kumla Kant alleged to be associated in the debt, was Bhugwan Chunder's gooroo.

The principal sudder ameen considered the pleas urged on the part of the defendant Soorajmonee to be valid. He also remarked that a six rupees stamp was insufficient for the bond, for though the obligation of the bond was to pay Company's rupees 1000, it appeared on the face of it that Sicca rupees 935 had been borrowed, and this sum was equivalent to Company's rupees 1000-8-6; and further he traced the suit to quarrels between the parties since Bhugwan Chunder's death.

After a careful perusal of the proceedings I find the evidence adduced on the part of plaintiff, this appellant, to be unexceptionable, and I think the claim ought to be decreed. To prove the enmity which is said to have induced plaintiff to bring forward his claim, three witnesses have been brought forward, and their testimony is merely this that they heard plaintiff express a threat, or rather an intention of instituting a suit; and one of the three said he heard from plaintiff that Soorajmonee (the minor) had quarrelled

with him. With respect to the defect imputed to plaintiff's claim from the bond being written on a six rupees instead of a ten rupees stamp, I remark that a six rupees stamp was sufficient for any sum in Sicca rupees not exceeding rupees 1000; that if it were otherwise the present bond is an obligation to pay Company's rupees 1000; and that the order of the Sudder Court, dated 15th April 1842, which required the sum to be substituted for the old currency in the determination of such like questions, was not issued till about two years subsequent to the date of this loan.

And finally from the opinion which I entertain of the whole case, I see nothing unlikely in the assertion of appellant, that Bhugwan Chunder had settled with him the debt due upon the first loan of rupees 100, some time before he contracted the new debt. The appeal is accordingly decreed, all costs being payable by respondents.

ZILLAH BEERBHOOM.

THE 3RD DECEMBER 1846.

PRESENT : F. CARDEW, JUDGE.

Case No. 233 of 1846,

*Regular Appeal from a decision of the Moonsiff of Dhekkabaree,
Neel Madhub Mookerjee, dated the 18th August 1846.*

Kurta Puresh Gope, (Defendant,) Appellant,

versus

Bhoirubnath Chobe, (Plaintiff,) Respondent.

THIS suit was instituted, on the 24th April 1846, to recover the sum of Company's rupees 31-6-8, being on account of an advance made by plaintiff to the defendant, (appellant,) on the 12th Bhadro 1252, for the delivery of paddy.

The sum advanced was 29 rupees, the difference between which and the amount claimed being the expected profit at the bazar rate of Poos 1252.

The defendant denied the claim, pleading that if the advance were true, plaintiff would have taken from him an acknowledgment in writing.

The moonsiff decreed the suit in favor of plaintiff, considering the advance satisfactorily proved by the evidence adduced; and no sufficient grounds having been shown to impugn the justness or correctness of his decision, I confirm the same, and dismiss the appeal with costs.

THE 9TH DECEMBER 1846.

PRESENT : F. CARDEW, JUDGE.

Case No. 131 of 1846.

*Regular Appeal from a decision of the Moonsiff of Dhekkabaree,
Neel Madhub Mookerjee, dated the 6th May 1846.*

Siboo Mundul, (Plaintiff,) Appellant,

versus

Tunoo Huldar, (Defendant,) Respondent.

THIS suit was instituted, on the 29th January 1846, to recover the sum of rupees 59-8-3, the value of raw silk.

Plaintiff states that on the 6th Poos 1251 B. S., he sold to the defendant, who was in the habit of purchasing silk in his village,

5½ seers of raw silk at the rate of 10 rupees the seer; that according to the prevailing custom in such transactions, the silk was delivered without a written acknowledgment, on defendant's verbal agreement to pay the price in three days, but defendant had broken the agreement, and plaintiff was therefore compelled to institute this suit.

The defendant in answer acknowledged the transaction as set forth in the plaint, in part, pleading that he received from plaintiff on the date in question only 4½ seers of raw silk at the rate of rupees 9-8, and that he paid plaintiff the price thereof in the month of Magh 1251.

The moonsiff, on the 6th May 1846, dismissed the suit, recording his judgment in the following terms: "I do not consider the plaintiff's claim proved, for plaintiff cannot file any accounts or *hat-chitha* (note of hand,) he merely produces three witnesses, whose evidence is contradictory. 2ndly, defendant has brought forward three witnesses by whose evidence it is clearly proved that defendant paid to plaintiff the sum of rupees 40-6, the value of 4½ seers of raw silk, which he had purchased from him at the rate of rupees 9-8. 3rdly, plaintiff says he has no accounts or *hat-chitha* to produce: this is wonderful, for it is improbable that a person, who deals in silk, should keep no accounts or other documents."

I do not concur with the moonsiff in his judgment. It is inconsistent in him to look for documentary evidence on the one side and to dispense with it on the other, and in this case indeed defendant was the party who might with more justice have been expected to produce such evidence in support of his pleas, for plaintiff is of a class of people who it is well known keep no accounts; he expressly stated in the plaint that the silk was delivered "according to the prevailing custom" without a written acknowledgment, and the answer does not deny that such is the custom. The moonsiff does not state in what respect the evidence of plaintiff's witnesses is contradictory, and I can find no contradictions or discrepancies in it to entitle it to discredit; but the defendant's witnesses are in my opinion the more liable to be distrusted, because they were not the persons who were present when the silk was delivered. It is a well known fact that the market price of silk fell suddenly last year, and it is more probable therefore that the defendant should thus endeavour to relieve himself of a bad bargain, than that the plaintiff should, without any assignable cause, come into court to recover the value of silk, the price of which he had just before received in full.

For these reasons I reverse the moonsiff's decision and decree against the defendant (who I observe has not responded to this appeal) the amount of the claim in full, with cost of suit in both courts.

THE 10TH DECEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 173 of 1846.

Regular Appeal from a decision of the Principal Sudder Ameen of Beerbhoom, Moulvi Nujumul Hug, dated the 27th June 1846.

Ranee Katyanee, (Plaintiff,) Appellant,

versus

Ramsoonder Raee, (Defendant,) Respondent.

THIS suit was instituted, on the 21st June 1845, corresponding with the 8th Asar 1252 B. S., to recover the sum of Sicca rupees 700, or Company's rupees 746-10-8, the amount principal and interest due on an ikrarnamah.

The plaintiff set forth that Seetanath Raee, deceased, on the security of his brother Ramsoonder Raee, defendant, Radhakisto Raee and Rooknee Raee, engaged of plaintiff's son Sreenurain Singh, deceased, the farm of turf Amchoowa at an annual rent of 2940 rupees for a term of three years, viz. from 1237 to 1239 B. S.; that Seetanath Raee paid the rent up to the end of 1238, and dying in 1239, was succeeded in possession of the farm, according to custom, by his brother, Ramsoonder Raee; that a balance of 350 rupees having been found due at the close of the lease, the defendant, on the 28th Bhadro 1241, appeared before plaintiff's son and signed an account for the same duly attested by witnesses, but no specific period having been fixed for the payment of the money, he executed to plaintiff's son, on the 5th Agrahon 1241, an ikrarnamah, or agreement, on a stamp paper, promising to liquidate the debt in the course of one year; that no part of the debt has been paid; that plaintiff's son died leaving plaintiff his heir, and she therefore sues the defendant for the amount of the ikrarnamah and an equal sum as interest.

The defendant in answer denied the ikrarnamah, and that he had taken possession of the farm as stated. He pleaded that his brother, Seetanath Raee, died on the 25th Chyete 1239, leaving two sons, who are answerable for his debts, and that they and the whole of the securities ought to have been sued; that immediately after his brother's death the zemeendar's naib deputed an *abadkar* to take charge of the farm; that he (defendant) was employed from the commencement of 1239 B. S., to the month of Asar 1241 as tehseeldar of Guespore, the zemeendary of Raja Bunwaree Lol, and subsequently up to the 10th Asin he was in uninterrupted attendance at the zemeendary cutcherry at Dhekkabaree, it was impossible therefore that he could have appeared at Kandee and signed the account and ikrarnamah on the dates set forth in the plaint.

The principal sudder ameen dismissed the suit on the ground that the ikrarnamah produced in support of the claim was not

genuine. He recorded that under the style of signature attached to the document the defendant could not be held liable, the document being signed thus—"Farmer Seetaram Raee, deceased, by the hand of Ramsoonder Raee, security, inhabitant of Amchoowa," which shows that the money was due not from defendant but from Seetaram Raee; that the document bore the appearance of having been recently written on old paper; that as the account originally signed by the defendant is said to have been attested by witnesses, there was no apparent cause why he should have been called upon to sign the ikrarnamah so immediately after it; and he therefore inferred that plaintiff's people had prepared the latter document with the view of preventing the claim from being barred by lapse of time.

To prove that the inference drawn by the principal sudder ameen was wrong, the plaintiff, (appellant,) has produced in this court the original account referred to, written on plain paper, and bearing date 28th Bhadro 1241 B. S., as set forth in the plaint; and I have submitted it together with the record of the case to the opinion of a panchaet convened under the provisions of Regulation VI. 1832.

The panchaet are of opinion that the ikrarnamah is not a genuine document. They record that the writing appeared fresh, it had sunk through the paper in several places, and had been rubbed over with the hand to give it an appearance of age, and the signature they considered as a copy of that attached to the "account," for the size of the writing and position of the words corresponded to a dot, a coincidence that could not possibly have happened had the two documents been signed independently of each other; and at the same time the style of the one was free, of the other labored.

I concur entirely in this opinion, and therefore dismiss the appeal with costs.

THE 11TH DECEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 107 of 1846.

Regular Appeal from a decision of the Moonsiff of Amduhra, Gholam Buttool, dated the 3d March 1846.

Rajkishore Mujoomdar, (Defendant,) Appellant,

versus

Ramsunker Ghose, (Plaintiff,) Respondent.

THIS suit was instituted, on the 15th March 1845, to recover the sum of Company's rupees 100-12, under the following circumstances set forth in the plaint.

The defendant, Rajkishore, having taken out execution of two decrees, viz. No. 171 for rupees 15-13-16 against Ram Gobind Mookerjea, and No. 212 for rupees 67-9-15-2 against Gungadhur Mundul, in both of which plaintiff was made liable as security; plaintiff called upon him in the presence of respectable people to adjust the claim, when defendant said: "I do not wish to exact a penalty from you, but pay me the amount due on the decrees, and when I have realized the money by the sale of my debtors' property I will return it to you." Plaintiff on this thinking it would be better to accept of such terms than to run the risk of suing the debtors, which he would be obliged to do if his own property were sold in execution of the decrees, paid to defendant the sum of 65 rupees, defendant remitting the difference, rupees 18-3-11-2, and took his receipt for the same, bearing date the 27th Srabon 1247 B. S., which stipulates that the money due on the decrees shall, when realized from the debtors, be paid to plaintiff. Defendant has since realized from the debtors the amount of the two decrees, but he has paid nothing to plaintiff; the plaintiff therefore with reference to the conditions of the receipt sues for the sum paid thereon with interest; and he includes the debtors amongst the defendants.

The defendant, Rajkishore Mujoomdar, answered to the following effect. That the payment of the money as alleged in the plaint was not true, if it were true, plaintiff would have required him to file a deed of acquittance in the cases of execution of the decrees, or he would have given notice of the transaction to the court; that it was improbable that he (defendant) should give a receipt for the money on the terms stated in the plaint; that the suit has been got up against him by Kistochund Mookerjea and Ram Kunae Chukurbuttee vakeel, with whom defendant had had a quarrel; that the plaint does not state in what proportions the money was paid on account of the two decrees, and why two separate receipts were not taken; that the assertion that he (defendant) had received from the debtors the amount of the two decrees was contrary to fact, as may be proved by consulting the records of the two cases of execution of decree; and that plaintiff had instituted this suit in anticipation of being called upon to pay the money himself.

Gungadhur Mundul filed an answer, acknowledging that he had not liquidated the amount of the decree No. 212 awarded against him.

Ramdya Mookerjea in answer alleged, that the amount of the decree No. 171 awarded against him had been discharged in full.

The moonsiff recorded his decision as follows: "The plaintiff's statement is proved by the evidence of the witnesses who subscribed to the receipt, one of whom is a vakeel of this court. The record of the case of execution of the decree No. 171 shows that the case was struck off the file on the statement of the decreeholder's vakeel to the effect that the claim had been settled; but whether

the money was paid by the security or the debtor is not shown: the sum due on this decree amounted with interest to rupees 17-10-17. The record of the case of execution of the decree No. 212, shows that the sum of rupees 3-6-5 was realized by the sale of the debtors' property. The orders for attachment were issued in both of the cases after the date of the receipt. Under such circumstances there is no doubt that the amount of the decree No. 171 was realized from the debtor. In my opinion therefore plaintiff is entitled to the sum of rupees 21-1-2, on account of the two decrees, with interest, from Rajkishore Mujoomdar, and the balance rupees 43-14-18, with interest, from Gungadhur Mundul."

Against this decision, an appeal was preferred by Rajkishore Mujoomdar.

I find that by the terms of the receipt, in which the particulars of the transaction are given in full, the decreeholder, (appellant,) in consideration of an immediate payment of 65 rupees, relinquishes all claim to the amount due on the two decrees in favor of the security, (respondent,) to whom the money is to be made over when realized from the debtors. The transaction is an unusual one, but I see no reason to doubt its validity, for it is corroborated by circumstances.

It appears that although in execution of both of the decrees the appellant applied for the sale of the security's property as well as the debtors', yet when the orders were issued for attachment, under dates posterior to the dates of the disputed receipt, he pointed out the property of the debtors' only, which property was duly attached, and in the one case, No. 212, the trifling sum of rupees 3-6-5 was realized by its sale, and in the other, No. 171, in which the property exceeded in value the amount of the claim, the sale was not proceeded with, the decreeholder's (appellant's) vakeel having informed the moonsiff, in confirmation of the report of the attaching peon, that the claim had been settled. The two cases were disposed of accordingly on the 12th Phalgon 1247, and the 18th Bysakh 1248, respectively, and from these dates up to the date of the institution of this suit, embracing a period of four years and upwards, appellant made no renewal of his application for the execution of his decrees.

The appellant denies that the claim under case No. 171, had been settled, asserting that the vakeel's statement was made in collusion with the security; but he can show no grounds for the assertion: the proceedings of the case were regularly conducted, and he is bound by the acts of his vakeel.

He further objects that the receipt bore the names of three attesting witnesses, who were not examined in the lower court, and who, the other witnesses affirmed, were not present when the document was executed. To meet this objection I have permitted him

to produce those witnesses in this court, and although they deny on oath all knowledge of the matter in dispute, I can place no confidence in their testimony, for their signatures, as executed in my presence, correspond exactly with the signatures attached to the receipt, and I therefore admit the explanation offered by the respondent on the point, namely, that they signed the document subsequently to its execution, at the instance of appellant, who had objected that none of the attesting witnesses were inhabitants of his village.

The vakeel, Ramkunae Chuckurbutee, whose evidence the appellant impugns on the ground that he bore enmity towards him, I have this day re-examined in this court; and if there were any doubt as to the justness of the respondent's claim, it would have been removed by the satisfactory manner in which this witness gave his testimony, which shows that the assertion that he bore enmity towards the appellant is utterly groundless.

For the above reasons I confirm the decision of the lower court, and dismiss the appeal with costs chargeable to appellant.

THE 12TH DECEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 145 of 1846.

Regular Appeal from a decision of the Moonsiff of Kundera, Mirza Ushkurree Fikrut, dated the 30th May 1846.

Shama Churn Das, (Plaintiff,) Appellant,

versus

Ramdas Dutt, (Defendant,) Respondent.

THIS suit was instituted by plaintiff, (appellant,) the late putnee talookdar of lot Teora, on the 22nd September 1845, to recover the sum of Company's rupees 72-2-1 on account of arrears of rent, with interest, for 1251 B. S.

The plaint set forth that the defendant held in mouzah Kopa, talook lot Teora, under a kubooleeut executed by him in Phalgon 1250, 32 beegahs of land bearing a jumma of Sicca rupees 61-4, or Company's rupees 65-5-1; that in 1251, defendant had possession of the land, but paid no rent; that the talook was sold at the commencement of 1252, for arrears of rent due to the zemeendar, and was purchased by Kalee Das Hajura; and plaintiff therefore institutes this suit as the only means of recovering from defendant his dues.

The defendant in answer denied the claim *in toto*. He pleaded that the plaintiff was in collusion with the present putnee talookdar, Kalee Das Hajura, who had instituted a separate suit, No. 276, (case of appeal No. 146 of 1846,) to recover the sum of 23 rupees, 10 annas on account of arrears of rent alleged to be due from him up to the month of Bhadro 1252; that he (defendant) had nothing

to do with plaintiff, he held no lands in the talook, and did not execute the kubooleeut; that in 1251, plaintiff proceeded against several of the ryots under Regulations VII. of 1799 and V. of 1812, and if the claim were true, he would have proceeded against him also in the same manner.

The plaintiff in his reply stated that the answer was in every respect untrue, and that defendant had joined the other ryots of the talook in a conspiracy to prevent him from recovering his dues by declining to give evidence in his favor.

The moonsiff in a judgment recorded at considerable length dismissed the suit. The main grounds for his decision are that the evidence of the four witnesses produced by plaintiff in support of the claim was contradictory, and altogether unsatisfactory; that they repeated their evidence "like a parrot," but when they came to be cross examined the only answer they could give was, "I do not know," or "I do not remember," and they were unable to give the particulars of the land alleged to be held by the defendant; that the kubooleeut was not drawn up according to custom, and was attested by witnesses, inhabitants of other villages, a circumstance inductive of doubt, for it is not pleaded that the ryots were in conspiracy when the deed was executed; that the *jumma-wasil-bakee* accounts of 1251, filed by the plaintiff, Kalee Das Hajura, in suit No. 276, shewed that defendant held an original jumma of rupees 54-2-10, to which rupees 7-1-10 were newly added in 1251, making up the sum total of rupees 61-4, the amount of the kubooleeut alleged to have been executed in the preceding year, a discrepancy which had not been explained; the accounts also exhibited a *bukaya* balance of rupees 18-2-4, which plaintiff had unaccountably foregone; and he, the moonsiff, inferred from the facts of these accounts having been made over to the new proprietor, and of the suits having been both instituted on the same date, that the two plaintiffs were acting in collusion.

On perusal of the record I can find no reason for impugning the correctness or justness of the moonsiff's decision, and I therefore affirm the same, and dismiss the appeal with costs.

THE 12TH DECEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 146 of 1846.

Regular Appeal from a decision of the Moonsiff of Kundera, Mirza Ushkurree Fikrut, dated the 30th May 1846.

Kalee Das Hajura, (Plaintiff,) Appellant,

versus

Ram Das Dutt, (Defendant,) Respondent.

THIS is the suit referred to in the preceding case, No. 145 of 1846, as having been instituted on the same date by Kaleedass

Hajura, (appellant,) the present talookdar of lot Teora, to recover from defendant the sum of rupees 23-10, on account of arrears of rent alleged to be due up to the month of Bhadro 1252 B. S.

The pleadings of the parties, and the decision of the moonsiff being similar to those recorded under that number, a similar order applies to this appeal, which is hereby dismissed with costs.

THE 14TH DECEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 155 of 1846.

Regular Appeal from the decision of the Moonsiff of Kytha, Munowur Alee, dated the 23rd June 1846.

Shaikh Sumee and Shaikh Gufoor, (Plaintiffs,) Appellants,

versus

Baboo Kurum Chund Golecha, Zemeendar, Gudadhur Sundyal, Naib, Koilasnath Chukurbuttee, Gomashtah, Kedarnath Chukurbuttee, Putwaree, and Shaikh Nuwaboodeen, Tehseeldar, (Defendants,) Respondents.

THIS suit was instituted, on the 1st September 1845, to contest a summary decision passed, under Regulation VII. 1799, by the collector of Moorsheadabad.

Plaintiffs state that they held in turf Jhaopara beegahs 22-8 of land, bearing a jumma of rupees 30-15-15; that in the month of Phalgon 1250 B. S., the muhal was purchased by the defendant, Baboo Kurum Chund Golecha, and they paid to his gomashtah the balance of rent due on account of that year in full; that on the 24th Magh 1251, they paid the sum of 28 rupees as rent, and on the 7th Phalgon the further sum of 3 rupees, for which a receipt was withheld; that notwithstanding they had thus paid the rent of 1251, in full, the naib Gudadhur Sundyal instituted a summary suit under Regulation VII. 1799, No. 395 of 1845, in the Moorsheadabad collectorate, against plaintiff Shaikh Sumee, claiming an arrear of rent, amounting with interest, after crediting the sum of 28 rupees paid, to rupees 23-9-7, and the collector decreed the suit *ex parte*, on the evidence of two tutored witnesses, in favor of the zemeendar, with costs; and that plaintiffs sought to set aside the collector's award as being unjust.

The defendant, Kurum Chund Golecha, in answer, pleaded that the claim was preferred under the summary suit in virtue of a kubooleut executed by Shaikh Sumee on the 5th Srabun 1251, for beegahs 20-13 of land at a jumma of rupees 47-11-8; that the kubooleut was proved before the collector by the evidence of the subscribing witnesses, and an award was passed in his. (defendant's)

favor on the 30th July 1845, that if there had been any valid objection to the claim, the ryot would have appeared in the collector's office and answered it; that plaintiffs had since offered to settle the amount of the summary decree, provided the costs were remitted, which defendant would not agree to; and that the alleged payment of 3 rupees, for which a receipt was withheld, was not true.

The other defendants subscribed to the above answer.

The moonsiff confirmed the collector's award. He recorded in his decision that the execution of the kubooleeut was satisfactorily proved by the two witnesses, Furinga, chokedar, and Afsoo, kotal, who were examined by the collector, and whose evidence was corroborated by the testimony of Prankisto Leogee, who deposed that he wrote the kubooleeut himself at plaintiffs' request; that the evidence of the two witnesses, Dhurm Mundul and Kooderam Set, proved that plaintiffs offered to settle for the amount of the award as stated; that plaintiffs' objections to the award were groundless, for they could give no good reason for not having appeared in the collector's office to answer the claim.

In my opinion the collector's award cannot be upheld. It appears that a return of *non est inventus* having been made to the process of arrest, the collector issued a proclamation, which was affixed to the outer door of the ryot's dwelling on the 20th July 1845, or only ten days before the date of decision. The proclamation was silent as to the period within which the ryot was required to appear, whereas the law, Clause 3, Section 18, Regulation VIII. 1819, provides that the period of fifteen days shall be specified in it. The non-attendance of the appellants in the collector's court cannot therefore be held to their detriment. The disputed kubooleeut is open to suspicion inasmuch as it is drawn upon a stamp paper, which was not required by law. The evidence of the two witnesses who are said to have subscribed to it I regard as unworthy of confidence: so far from being corroborated by, it is at variance with that of Prankisto Leogee, in that they state that the kubooleeut was written by Kedarnath Chukurbutee, a discrepancy which the respondent's vakeel is unable to explain. Neither can I place any confidence in the evidence of the two witnesses, who are brought forward to prove the offer of compromise, for the costs of the summary suit amounted to rupees 4-13-9 only, and I am of opinion that a new proprietor would have willingly foregone that sum, with reference to the prospective advantages, if such an offer had been really made, for the appellants produced evidence both documentary and oral, which shows that they have heretofore paid rent at the amount given in the plaint.

For these reasons I reverse the collector's decision and that of the moonsiff, and decree the appeal to appellants, with all costs payable by respondents.

THE 15TH DECEMBER 1846.

PRESENT : F. CARDEW, JUDGE.

Case No. 159 of 1846.

*Regular Appeal from a decision of the Moonsiff of Gopalpore,
Gopeenauth Das, dated the 5th June 1846.*

Debee Purshad Mookurjee, Ram Chunder Mookurjee, and Ram
Soonder Mookurjee, (Defendants,) Appellants,
versus

Kaleedas Mookurjee, (Plaintiff,) Respondent.

THIS suit was instituted, on the 7th January 1845, to recover the sum of Sicca rupees 91, or Company's rupees 97-1-1, being the price of 3 beegahs, 3 cottahs of rent free land, situated in mouzah Mankur, purgunnah Gopebhoom.

Plaintiff stated that he purchased the land in question from Sunkurnath Mookurjee, the father of the defendants, (appellants,) for the sum of 91 Sicca rupees, under a deed of sale bearing date the 9th Assin 1242 B. S., which conditioned that the price should be returned to the vendee in the event of the lands being resumed in favor of Government; that the land has since been resumed in suit No. 277, and the vender's heirs have entered into settlement engagements with the Government; and he (plaintiff) therefore sues to recover the purchase money in conformity with the condition of the deed..

The defendants in answer denied that their father executed the deed of sale mentioned in the plaint. They pleaded that on the date indicated their father gave the plaintiff a *kubala*, whereby he simply mortgaged the land in question for the period of five years, viz. from 1242 to 1246, in payment of a debt of rupees 32-8; that plaintiff had possession up to the close of 1245, when the land was resumed in favor of Government, and they (defendants) have since taken the settlement in perpetuity.

On the 21st March 1846, the moonsiff struck off the suit on default, an order which was overruled on summary appeal: and the suit having again come before him, on the 5th June 1846, he decreed for the plaintiff on the grounds that the execution of the deed of sale produced by him, (conditioning that the price of the land should be returned in the event of its being resumed,) was proved by the evidence of the subscribing witnesses, Degumber Ghose and Gooroo Churn Hatooee; and that the plea advanced by the defendants that the transaction was of the nature of a mortgage, was not satisfactorily established by the evidence of the witnesses produced by them.

It was essentially necessary in my opinion that the deed of sale, which plaintiff is accused of having substituted for a mortgage bond, should be identified; but the two witnesses named by the moonsiff are unable to read and write, and they not only failed to identify

the deed, but they could not explain what its conditions were. Under such circumstances their evidence cannot be held as constituting proof of the execution of the deed in question, and I therefore reverse the moonsiff's decision, and decree the appeal to appellants, with costs in both courts.

THE 16TH DECEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 158 of 1846.

Regular Appeal from a decision of the Principal Sudder Ameen of Beerbhoom, Moulvi Nujumul Huq, dated the 15th June 1846.

Bhuwanund Bukshee and Himut Alee Mundul, (Defendants,)

Appellants,

versus

Arnopoorna Dibya and Raemunnee Dibya, (Plaintiffs,)

Respondents.

THIS suit was instituted, on the 8th February 1845, by plaintiffs, (respondents,) as putnee talookdars of lot Dhundadihi, to recover from defendants, (appellants,) the dur-putneedars, arrears of rent amounting, with interest, to Company's rupees 1388-2-11.

The plaintiffs state that the defendants purchased the durputnee of lot Dhundadihi, bearing a jumma of Sicca rupees 1099, or Company's rupees 1172-3-6, at a sale held by the collector in 1234 B. S., in execution of a decree awarded against the former durputneedars, Shama Churn Bhattacharj and others; that on the 13th Magh 1251, the defendants' rights and interests in the durputnee were sold in execution of a decree awarded against them, in the principal sudder ameen's court, on account of an arrear of rent due up to the close of 1246 B. S., and that the sum now claimed is due for subsequent years as follows.

Durputnee rent from 1247 to 1251 inclusive, being

five years, at the rate of rupees 1172-3-6 per annum,

Deduct, putnee rent paid by defendants

to the zemeendar,

Profits paid to plaintiffs:

In 1247 425 0 0

1248 420 4 0

1249 300 0 0

1250 144 6 0 1289 10 0 4812 14 10

Difference, . . . 1048 2 8

Add interest as per account, 340 0 3

Demand, Company's rupees . 1388 2 11

The defendants in answer pleaded that, as their rights and interests in the talook were sold in the month of Magh 1251, the demand for rent in full of that year was untenable; that the rent had been paid up to the year 1250 in full, and the sum of 300 rupees, besides six months' putnee rent, on account of 1251; that interest was not demandable, and there was in fact nothing due.

The parties now filed separate statements giving the amounts and dates of the several payments of rent, as acknowledged on the one side and alleged on the other.

A comparison of these statements, one with the other, shows the following items to be disputed.

Item No. 1	Rs. 120 0 0	on account of 1249	paid on 5th Bhadro 1250
2	„ 45 0 0	ditto	do. 25th idem.
3	„ 100 0 0	on account of 1250	do. 5th idem.
4	„ 175 6 0	ditto	do. 17th Poos 1251
5	„ 255 0 0	on account of 1251	do. ditto.
6	„ 45 0 0	ditto	do. 5th Magh 1251

Item No. 1 is supported by a receipt for rupees 130-6, including an acknowledged payment of rupees 10-2 on account of 1248.

Item No. 3 is supported by a receipt for rupees 244-10, of which sum rupees 144-10 is acknowledged by plaintiffs.

Items Nos. 4 and 5 are supported by a receipt, which is denied altogether.

Items Nos. 2 and 6 are unsupported by a receipt.

The principal sudder ameen decreed the suit to plaintiffs in full of their claim. He rejected the receipts because he did not think it probable that two receipts would have been given on one and the same date; because none of the witnesses produced in support of the receipts were inhabitants of plaintiffs' village; and because the records of a former suit showed that up to the 26th May 1844 alleged payments of rent supported by receipts granted by Gooroorpurshad Mookurjee, the same person who granted the receipts now disputed, were a subject of dispute between the present parties which was ultimately decided in favor of plaintiffs. He objected to the receipts further because they did not give Gooroorpurshad's designation, and plaintiffs denied that he was employed by them as naib. The plea that the rent in full of 1251 was not demandable from defendants, he rejected, because the *kistbundee* signed by the former dur-putneedars, to whose rights and interests defendants had succeeded, showed that the whole of the *kists* (or instalments) were payable up to the month of Magh.

The reasons given by the principal sudder ameen for rejecting the receipts are insufficient in my opinion, for the evidence of the witnesses produced in support of them was given in a manner natural and indicative of truth. This was the view taken by me of the case on the first perusal of the record, but the respondents

having proposed to file their account books in corroboration of their claim, I permitted them to do so.

The account books which they have now produced are not bound; they consist of detached leaves and covers stitched together with twine, thus affording every facility for falsification by the substitution of new leaves in the place of others; and that this has been done in this instance I entertain no doubt. The books on account of the years not disputed bear no marks of suspicion, the stitches are well thumbed over and soiled with the hand as if they had been in constant use; but the stitches of the books of 1250 and 1251 are not so, they have evidently been recently opened and restitched with the same twine. The leaves of the account book of 1260 are numbered arithmetically, and the numbers show that they were all written at the same time and with the same colored ink, with the exception of the leaves Nos. 14, 15, and 16, bearing the dates of two of the disputed payments, the numbers on which are written with ink of a darker color. I might mention other suspicious appearances, but the above is sufficient to show that the accounts are unworthy of credit. Even the witness produced by respondents to authenticate the accounts,—not the writer thereof, Gooroorpurshad Mookurjee, but a mohurrir who has lately been taken into their employ,—acknowledges in his evidence that the stitches of the account books of 1250 and 1251 bear the appearance of having been recently opened; he also acknowledges that the receipt for rupees 130-6 was in the handwriting of Gooroorpurshad Mookurjee, although he had doubts about the other two. But I have no doubt on the point myself. The receipts are evidently written in the same handwriting as the account books, and the character of the writing is such as not to be easily imitated: they are in my opinion satisfactorily proved by the evidence of the witnesses in whose presence the payments were made, in plaintiffs' own house, and I therefore admit them as valid.

As the tenure was sold on the 13th Magh 1251, the kist of that month was demandable not from the appellant, but from the new purchaser; vide *Precedents of the Sudder Dewanny Adawlut*, case of Rajah Bidanund Singh, appellant, *versus* Lutchmee Dutt Panrey and another, respondents, page 171, volume VII. I therefore deduct from the claim the sum of 42 rupees on account of the kist of Magh 1251.

The sum due from appellants to respondents will thus amount to Company's rupees 496-3-4, principal and interest, as per account drawn up by Becharam Chatoorjea, a mohurrir of this court, the correctness of which both parties acknowledge; and I accordingly award that sum to respondents, in amendment of the principal sudder ameen's decision, and make the costs of suit chargeable to the parties in proportion to the amount decreed and dismissed.

THE 17TH DECEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 249 of 1846.

Regular Appeal from a decision of the Principal Sudder Ameen of Beerbhoom, Moulvi Nujumul Huq, dated the 25th August 1846.

Urnath Chatoorjea, (Defendant,) Appellant,

versus

Gholam Sudfer, (Plaintiff,) Respondent.

THIS suit was instituted on the 11th March 1845, to recover the sum of Company's rupees 354-14-8, on account of arrears of rent.

Plaintiff states that on the 12th Asin 1248 B. S., he purchased at public sale, in the name of his gomashtah, Cheenibas Race, Hooda Radhikapore, and on the 20th Poos following he let one of the mouzahs, named Nij Radhikapore oorf Gomai, in farm for seven years, viz. from 1248 to 1254, to the defendant, Urnath Chatoorjea, on the security of the defendant, Manick Chund Race, at an annual juma of Company's rupees 439; that in 1249, the farmer paid the sum of rupees 202, and in 1250 rupees 407, leaving due on account of the two years the principal sum of rupees 269 and interest rupees 85-14-8, equal to rupees 354-14-8, the amount of claim.

The defendant, Urnath Chatoorjea, in his answer (which he was permitted to file after the plaintiff's proofs had been received, on his having shown that the default was not wilful) pleaded that he was entitled to a refund on account of the year 1248, the rent of which he had paid up in full, although the plaintiff had a right to receive the rent from the kist of Kartik only, and the plaintiff's naib promised to settle for the amount of excess payments both in 1249 and 1250, but he failed to do so; that the rent due up to the close of 1251 B. S., reckoning the rent from Kartik to Chyte 1248 at rupees 240, amounted to rupees 1557, of which he has paid at different times as per details given, the sum of rupees 1417, leaving due the principal sum of rupees 140 only; that the accounts filed by the plaintiff were false, and he begged that the real accounts might be called for and the suit decided accordingly.

The plaintiff in his reply contended that the rent of the year 1248 was not the subject of dispute, and the plea in respect thereof could not be entered upon in this suit, which related to the rent of 1249 and 1250 only; and that defendant had colluded with his (plaintiff's) discharged naib, Degumbur Sirkar.

The defendant, Manik Chund Race, security, did not appear in the lower court.

The principal sudder ameen decreed the suit against the two defendants in full of the claim. He was of opinion that the plea

relative to the alleged excess payments on account of 1248 constituted a distinct cause of action, which could not be entertained in this suit, and he therefore restricted himself to an enquiry into the alleged payments of rent on account of 1249 and 1250, as being the years of dispute. On examining the several documents produced by the defendant, (appellant,) in support of his pleas of payment, he found only three, professing to be on account of payments of rent for the years of dispute, the authenticity of which was denied by the other party, viz. a rooka (or note) for 5 rupees, bearing date the 24th Srabon 1250, and the signature of Shaikh Eedoo, nazir, and two *dakhilas* (or receipts) for 99 rupees bearing dates the 21st Asin and 16th Kartik 1251, and the signature of Degumbur Sirkar. These sums were not entered in the *seha buhi*, or day books, filed by the plaintiff, and the payments were not proved, two witnesses only being brought forward in support of them, who could merely depose that the signatures attached to the *dakhilas* were in the handwriting of Degumber Sirkar, and the principal sudder ameen consequently rejected them.

I see no reason to interfere with the principal sudder ameen's decree. His decision on the plea relative to the alleged excess payments of 1248 appears to be correct and in conformity with the practice of the courts. The day books filed by the plaintiff seem to have been regularly kept up; the several entries therein bear the number of the chulan (or invoice,) but the two disputed *dakhilas* bear numbers appropriated to other items, thus proving them to be not genuine. I therefore affirm the award, and dismiss the appeal with costs.

ZILLAH BHAUGULPORE.

THE 8TH DECEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 24 of 1846.

Appeal from a decision of Baboo Noccoor Chunder Chowdry, Sudder Ameen of Bhaugulpore, dated the 28th May 1846.

Sahibram Munder, (Defendant,) Appellant,

versus

Tekhhchund Coor, after his decease Moteeram Coor and others,
(Plaintiffs,) Respondents.

CLAIM, rupees 286-10-11, with interest, on account of arrears of rent.

This suit was instituted before the moonsiff of Kishungunge, but subsequently transferred (with others) to the sudder ameen for disposal, by order of the Sudder Court.

The respondent, the proprietor of a 7½ anna share in mouza Khurrick, pergunnah Chey, sued the appellant, who is the moos-tajir of the remaining 8 annas, 10 gundahs, for his share of the rent of certain lands cultivated by him, the appellant, from 1246 to 1251 F. S., inclusive. The plaint set forth that in 1246 and 1247 F., the appellant held the undermentioned land in cultivation, viz.

Beegahs.	Cottahs.		R.	As.		Sa.	Rs.	As.	Ghs.
29	5	at the rent of	1	5	per beegah, or	38	10	10	
9	12	do.	0	11	do.	6	9	12½	
1	4	do.	0	8	do.	0	9	12½	

					Total,	45	13	15
To which is added a rate, payable by resident cultivators, called <i>bus-o-bas</i> ,						16	8	0

Making the total demand per annum,	62	5	15
From which is deducted, on account of the share held by appellant in <i>ijarah</i> ,	32	6	17½

Leaving due to respondent, 29 14 17½
for 1246 F., and a like amount for 1247 F.

That from 1248 F. to 1251 F., the respondent cultivated

Beegahs. Cottahs.			R. As.			Sa. Rs. As. Ghs.			
39	8	at the rate of	1	5	per beegah, or	47	12	0	
9	12	do.	0	11	do.	6	9	12½	
1	4	do.	0	8	do.	0	9	12½	
Total,						54	15	5	
To which add <i>bus-o-bas</i> , as above,						16	8	0	
Making the total annual demand,						71	7	5	
From which deduct on account of appellant's ijarah						37	2	12½	
Leaving due to respondent,						34	4	12½	
annually from 1248 F. to 1251 F. S.									

That, in this way, the total amount due to respondent for the period in question came to Sicca rupees 179-10-5, or Company's rupees 286-10-11.

The appellant pleaded that the respondent had over-stated both the quantity of land and the amount of rent, and that the demand on account of *bus-o-bas* was contrary to local usage.

The sudder ameen, deeming the claim to have been fully proved by the evidence of two putwarries named Bussawun Das and Benee Lall, and of other witnesses brought forward by respondent, and that the demand of *bus-o-bas* was sanctioned by local usage, (and had been shewn to be so, by the evidence given by certain of the maliks in another case,) decreed in respondents' favour for the full amount claimed by him, with interest and costs. He remarked that the appellant had not brought forward any evidence in support of his pleas.

In appeal, the defendant reiterates the objections advanced by him in the lower court, and contends that the claim of *bus-o-bas* is inadmissible under Section 55, Regulation VIII. 1793.

As it appeared from the account given by the witnesses, that the item denominated *bus-o-bas* is not of the nature of ground rent, but a *tax* levied from resident cultivators at the rate of rupees 1-8 for every plough, and as such exactions are prohibited by the Regulation quoted by appellant, the appeal was admitted on the 16th November, and notice served upon the respondent.

JUDGMENT.

The only point for consideration in this case is whether the demand of *bus-o-bas* can be legally enforced, or not. It is very clear that this claim is *over and above the actual land rent*, and, consequently, it can only be considered as one of the impositions prohibited by Section 54, Regulation VIII. 1793. I, accordingly, reverse so much of the decree of the lower court as awards *bus-o-bas*, and affirm the remainder. The sudder ameen's decree is therefore modified accordingly, with costs in proportion to the amount decreed.

THE 8TH DECEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 292 of 1846.

Appeal from a decision of Moulvee Mohioodeen, Moonsiff of Noorgunge, dated the 5th September 1846.

Noonhoo Manjee, (Defendant,) Appellant,

versus

Ram Sahay Sahoo, (Plaintiff,) Respondent.

CLAIM, rupees 85-5-4, principal and interest of a note of hand (teep) dated 6th Jeyt 1244 B. S.

This suit was instituted by respondent, on the 18th May 1846, for the recovery of the above amount from appellant under the written obligation above alluded to.

The appellant admitted having borrowed the money from respondent, and given him the note of hand, but pleaded payment of 55 rupees on the 18th Bysakh 1253 B. S., to a brother of the plaintiff named Pertaub Sahoo, who came forward as third party acknowledging the payment, and claiming for himself a share in the transaction.

The moonsiff, however, decided that as the *teep* was executed in favor of plaintiff only, the defendant had no authority to pay to any other party, and decreed in respondent's favor, and the appellant has shewn no grounds for impugning the justness of this decision, which is hereby affirmed under the provision of Clause 2, Section 2, Regulation IX. 1831.

THE 8TH DECEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 293 of 1846.

Appeal from a decision of Baboo Gunga Govind Syrbadeekaree, Moonsiff of Kishengunge, dated the 25th August 1846.

Jhontee Fotedar and Tota Fotedar, (Defendants,) Appellants,

versus

Chubbee Gowalah, (Plaintiff,) Respondent.

Claim Company's rupees 64, price of cattle.

THIS suit was instituted by respondent, on the 15th December 1845, for the recovery of the value of 4 buffaloes, said to have been forcibly carried off from the plaintiff's (respondent's) "bytan" by the appellants and others.

The defence was that the defendant, Jhontee Fotedar, is moostajir of Shazadpoor, and that he had distrained 2 buffaloes belonging

to Rungela Gope (plaintiff's brother) for an arrear of rent due by him; that when the ameen proceeded to sell the distrained property, the chowkeedar who had charge of it produced 2 other buffaloes of inferior value, which, having been reported to the collector, the buffaloes originally attached, together with two others, were sequestrated, and made over to one Nuncoo Mundul, who became surety of the defaulter.

The moonsiff, considering the claim to have been proved, passed a decree in plaintiff's favor for 60 rupees, the estimated value of the buffaloes, with interest and costs, without calling for the record of the distraint case from the collector's office.

In appeal it is pleaded that the moonsiff's enquiry is incomplete.

It appears that although the defendant's witnesses deposed to the cattle having been distrained for arrears of rent claimed by Jhontee Fotedar, the moonsiff did not ascertain the truth or falsehood of this statement by calling for the record from the collector's office, neither did he take the deposition of the surety Nuncoo Mundul named in the defendant's answer. The suit is, accordingly, remanded, in order that he may supply this omission. The usual order for refund of stamp duty, &c.

THE 14TH DECEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 22 of 1846.

*Appeal from a decision of Baboo Nocoos Chunder Chowdhry,
Sudder Ameen of Bhaugulpore, dated the 21st May 1846.*

Raja Bidanund Sing Bahadoor, (Defendant,) Appellant,

versus

Mohee Loll Jha, cultivator, (Plaintiff,) Respondent.

CLAIM, rupees 360-4-10, to set aside a summary award passed by the collector under Regulation V. 1812, and to recover the value of distrained property.

This suit was instituted before the sudder ameen of Monghyr on the 24th August 1844, and, subsequently, transferred to Bhaugulpore.

The plaintiff stated that he cultivated 71 beegahs, 1 cottah of land at rates aggregating 60 rupees, 12 annas, which rent he has been in the habit of paying to the former zeemindar of Kurruckpoor, and to Nund Loll Chowdhree, &c., putneedars, who gave him receipts up to the year 1245 F.: That, in 1247 F. S., the defendant became the purchaser of the estate; but failed in his attempts to annul the putnee tenures: That, in 1250 F., he (defendant) through a servant of his named Reet Loll attached plaintiff's property for an alleged arrear of rupees 360-4½ on account of 1249 F.,

calculated at the rate of rupees 4-10, under Regulation V. 1812: That plaintiff, having given security, disputed the demand before the collector, who upheld the attachment: That plaintiff had paid the rents for 1249 F., to the putneedar, and, consequently, owed nothing to the defendant, who had no right to demand enhanced rents.

The defendant pleaded that, when the Kurruckpoor estate was sold to him, all engagements between the late proprietor and the under tenants became null and void: That the pergunnah in which plaintiff cultivates is not held in *putnee*; That plaintiff did not appear when a notification was served upon him calling upon him to pay rent at the rate of 4 rupees, 10 annas, which is not excessive, and that the buffaloes attached sold for only 42 rupees.

Nund Loll Chowdhry, &c., came forward as *oozoordars*, pleading that their putnee tenure had been upheld from the zillah court to the Sudder, and that plaintiff had paid his rents for 1249 to them according to former usage.

The sudder ameen, deeming it to have been proved by the evidence adduced before him, that plaintiff had paid the rent for 1249, to the oozoordars, and that the putnee tenure of the latter had been recognized by the collector, who passed a decree in their favor for certain rents claimed by them as the holders of it, was of opinion that the collector ought not to have upheld the attachment under the Sudder Court's Circular of the 3d June 1813, and moreover, that the attachment itself was illegal under Section 9, Regulation V. 1812. He accordingly passed a decree setting aside the summary award, and giving to plaintiff the sum for which his buffaloes were sold, viz., 42 rupees, with interest and costs.

In appeal from this award, it is pleaded that the sudder ameen's decision is contrary to law; that after appellant purchased the Kurruckpoor estate, he caused a general notification to be served upon all the cultivators under Section 9, Regulation V. 1812, to which respondent did not attend, and, in consequence, his property was attached in conformity with Section 13 of that enactment; that agreeably to Section 5, Regulation XLIV. 1793, Sections 2, Regulation VIII. 1819, 30, Regulation XI. 1822, and Construction No. 1312, all engagements between the late proprietor and the under tenants became null and void after the sale; that the pergunnah in which plaintiff's holding is situated was first all held *khaus* by him (appellant,) and afterwards let out in farm to Ahmud Buksh, and that Nund Loll Chowdhry's, &c., assertion that they held it in putnee is false; that the Circular Order quoted by the sudder ameen has nothing to do with the question at issue; that, according to the decision of the Court of Sudder Dewanny Adawlut of the 30th May 1844, the appellant, as auction purchaser, has full power to collect direct from the cultivators under Clause 2, Section 18, Regulation VIII. 1819; that notwithstanding that the

sudder ameen awarded only a small portion of plaintiff's claim (142 rupees,) he has saddled the appellant with *full costs, &c. &c.*

On the 13th November 1846, the appeal was admitted, and a notice ordered to be served upon the respondent.

JUDGMENT.

In this case the appellant, as auction purchaser of the Kurruck-poor estate, was competent to annul all tenures originating with the late defaulting proprietor, as declared in Section 30, Regulation XI. 1822, and consequently, the alleged *putnee* lease of Nund Lall Chowdry, &c., and the alleged payment of the rent for 1249 F., to them by the respondents, cannot be recognized by the court. It therefore only remains to be considered whether the demand for which the respondent's property was attached was a fair one, or otherwise. It is in evidence that in 1248 F., the appellant issued a notification calling upon the cultivators *generally* to take out leases, or, in default, to pay an enhanced rent of rupees 4-10 per beegah, but there is no evidence to shew that such high rates existed in the pergunnah, or in the places adjacent, and consequently the zemindar had no authority under the provisions of Regulation V. 1812, to ask so much. The rates in force are described by the plaintiff's witnesses and by Koonj Lall Das, (a witness of defendant) to vary from 8 annas to 1 rupee 2 annas, and the quantity of land in plaintiff's cultivation is said to be 63 beegahs, 11 cottahs, consequently, the *demand* of rupees 360 for which the attachment was made was altogether exorbitant; but it appears that the sum *actually levied* was only rupees 42, which was not more than the plaintiff's proper rent at the average of the above rates, and consequently is not liable to be refunded under Section 10, Regulation V. 1812. If the plaintiff has (as he states) paid the rent for 1249 F. S., to the putneedars also, (which he had no business to do in the face of the zemindar's notice,) he can sue them for the refund of it. The appeal is, accordingly, decreed, but, under all the circumstances, it seems equitable that each party should pay his own costs.

THE 16TH DECEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 9 of 1846.

Appeal from a decision of Moulvee Alli Buksh Khan, Sudder Ameen of Monghyr.

Mussumat Nem Coor and others, (Defendants,) Appellants,
versus

Coer Raj Buhadoor and others, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 533-5-1, for possession of 50 beegahs of land with mesne profits.

This suit was instituted by respondents, on the 10th of January 1844, to set aside an order of Khyrat Alli Khan, deputy collector of Patna, dated the 12th of December 1842, confirming the *thakbust* (or survey) of an ameen by name Jhoomuk Lall, appointed to survey their (respondents') estate, by which order, they were dispossessed of a parcel of land, called *kittah Baeeskoorwah*, consisting of 50 beegahs, which the ameen, in collusion with defendants, (appellants,) assigned to mouzas Ooswa and Kallianpoor Eshak Chuck, defendants' estate: respondents found their claim to the land on a *surhudbundee* (or specification of boundaries,) prepared by the canoongoe on the 12th Assin 1228 F. S., by order of the collector.

The defendants, (appellants,) contend for the correctness of the ameen's *thakbust*, and claim the land as part of their estate above named: they state that the respondents' amlah, as well as the proprietors of the neighbouring villages of Sooltanpoor and Dhurumpoor, signed the ameen's map, thereby virtually acknowledging its correctness.

The sudder ameen, after deputing an ameen (Benee Pershaud,) to prepare a map of the disputed land, decided in respondents' favor, in conformity with the *surhudbundee* of the canoongoe, copy of which was produced by them, (the respondent.) He considered the order of the deputy collector of the 12th December 1842, to have been passed on insufficient grounds, and ordered it to be set aside.

Against this decision it is urged by appellants that plaintiffs neither objected to the *thakbust*, nor when the boundary marks were put up; that the original *surhudbundee* referred to by respondents does not bear the signature of any public officer, has never been proved in any court of justice, and is unworthy of credit from the circumstance of the canoongoes, by whom it purports to have been drawn up (Deriao Singh and Chummun Lall,) having put down Fureedpore as their own village, and made mention of respondents.

On the 8th September last, the appeal was admitted, in order that the record of the survey case, and the map relating to the same, might be produced, as well as the record of a former *butwara* or partition alluded to by the deputy collector who fixed the boundaries, but, notwithstanding that repeated requisitions have been made to Patna and Monghyr for these papers, they are not forthcoming, and it seems needless to postpone the case any longer for them.

The sudder ameen's decision is based upon an authenticated copy of a *surhudbundee*, prepared by an order of the collector dated the 20th June 1820, the correctness of which has been ascertained by the ameen deputed by the lower court, the map drawn up by whom (in which the boundaries correspond with those

detained in the *surhudbundee*) has been signed by the mokhtars of both parties.

This document (the *surhudbundee*) was not produced before the deputy collector, and, consequently, *his* determination of the boundaries cannot be relied upon. I see no reason to interfere with the decision of the lower court. Appeal dismissed with costs.

THE 16TH DECEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 33 of 1846.

Appeal from a decision of Baboo Nocoor Chunder Chowdry, Sudder Ameen of Bhaugulpore, dated the 30th June 1846.

Sheikh Meher Ali, Lal Mohumud Buffatee, and Karroo Mundil,
(Defendants,) Appellants,

versus

Musst. Beebee Pecarin, (Plaintiff,) Respondent.

CLAIM, for possession of landed property under a farming lease, with mesne profits. Action laid at Company's rupees 972-11-9.

This suit came before this court in appeal on the 15th March 1845, and was remanded for re-trial for the reasons set forth in the decision passed by me on that date, of which the following is a copy.

"The appellant, (plaintiff,) stated that Musst. Beebee Boodhun, the widow of Sheikh Khoda Bux, on the 17th September 1841, granted her a lease of certain villages at a yearly jumma of rupees 917, for 7 years from 1249 F. S., and took an advance of rent from her of rupees 57, but that she could not obtain possession of the property.

"Musst. Beebee Boodhun did not defend the suit, but her son, Sheikh Meher Ali, appeared, and pleaded that he was the rightful owner and possessor of his father's estate, and that his mother never had possession of it.

"The sudder ameen dismissed the claim on the grounds that the pottah was invalid, in as much as it purported to have been signed by Bebee Boodhun *be kullum* (or with the pen of) Mohsin Ali moktar, whereas, the latter held no power of attorney authorizing him to sign for her, and moreover that the grantor of the pottah had not defended the suit, while her son denied that the pottah had been given, &c.

"The appellant pleads that the reasons assigned by the sudder ameen for disallowing her claim are insufficient.

"It appears that the award of the deputy collector, passed under the provisions of Section 14, Regulation VII. 1822, upon which the appellant founds her claim, has not been filed, nor has

the sudder ameen enquired into the *real* points upon which the whole question hinges, viz. whether the grantor of the pottah (Musst. Boodhun) was in undisturbed possession of the property at the time she granted the lease of it to the plaintiff, or not, and whether she had the *right* to grant such a lease or not.

“Remanded to the sudder ameen of Bhaugulpore for re-investigation.”

The sudder ameen, after taking evidence on the above points, came to the following decision.

As it is proved by the pottah filed by plaintiff, which is duly registered, the roobacarree of the deputy collector, and the evidence of witnesses, that Bebee Boodhun granted a lease of the property to plaintiff for 7 years (from 1249 to 1255 F. S.) and that she had possession, and full authority to grant such leases, a fact which Meher Ali himself admitted in one of his petitions; and as it appeared from a *fysala* passed in appeal from a decision of the sudder ameen, and from one passed by the moonsiff of Bhaugulpore that neither Bebee Mokeema nor Bebee Eedun, parties named by one of the defendants, Meer Mohsin Ali, in his answer, had possession, and, moreover, as no fraud or collusion was apparent in the matter, the plaintiff's lease was, in his (the sudder ameen's) judgment, one which should be upheld upon the principle contained in Construction No. 540, and he, accordingly, passed a decree in plaintiff's favor for possession of the land under the lease, with mesne profits to be recovered (with costs of suit) from Meher Ali.

Against this decision it is pleaded by Meher Ali, (to which the other appellants assent,) that he had possession of the property for 2 years antecedent to the plaintiff's lease, which fact will appear from his (Meher Ali's) petition of the 27th December 1841, and several orders of the civil, criminal, and revenue courts of the district; that the roobacarree of the deputy collector cited by the sudder ameen was set aside by the collector on the 7th May 1842; that in a petition presented by Bebee Boodhun on the 29th March 1834, she declared that her husband (Khoda Bux) had given up all his property to him (Meher Ali,) and that she was only entitled to subsistence allowances; that the *soolanamah* (or deed of settlement) said to have been executed by Bebees Boodhun, Eedun, and Mokeema, had been declared invalid by a decree of the sudder ameen of the 3d May 1834, and one of the judge dated the 12th July 1844, and even had it not been so, the document could not avail plaintiff, as it shewed that Bebee Boodhun *alone* had no right to grant the lease; that this suit has been got up by Meer Mohsin Ali, in collusion with one Nazim Ali, with a view to deprive him (Meher Ali) of his rights, the plaintiff being a common woman of the town who lives with Meher Ali.

JUDGMENT.

In this case the grantor of the lease, Musst. Bebee Boodhun, has not defended the suit, but from the petition which she presented in the collector's office on the 27th November 1841, it appears that she *then* declared that the property in question had been made over to her by her husband Khodah Bux as her dowry (*deyn mohur*), and that her son, Meher Ali had nothing to do with it; whereas, in the pottah itself, she signs as *mother* and *guardian* of Meher Ali, thereby making it appear that she acted in behalf of her son in the matter. The sudder ameen cites Meher Ali's petition to the collector of the 27th December 1841, as a proof of his having admitted that his mother held possession of the property, but, on referring to this document, I find that it is distinctly asserted therein, that Meher Ali had attained his majority *two years previously*, and held possession *himself*, and that Meer Mohsin Ali had got Bebee Boodhun into his power and got her to sign the lease to answer his own ends. I do not find any official records to shew that Bebee Boodhun had ever been recognized as the guardian of Meher Ali; on the contrary, it is stated in the collector's order of the 9th May 1842, that she was *at feud* with her son, who it seems was *not* a minor when she granted the lease (the 17th September 1841)—he is present in court and appears to be about 25 or 26 years of age *now*—Bebee Boodhun's statements made at different times are most inconsistent; for in a petition presented by her to the collector on the 29th March 1834, she stated that she was only entitled to subsistence allowance, and begged that the name of her son, Meher Ali, might be recorded, together with that of her daughter, Fuzzeeltoonissa, and there is no proof that she had empowered Meer Mohsin Ali to act for her, *in the matter of the lease*, the general power of attorney, which has been filed, not containing any stipulations to that effect. For these reasons, I am of opinion that the lease under which respondent claims cannot hold good, and I, accordingly, decree the appeal, and reverse the decision of the lower court, with costs against respondent. •

ZILLAH EAST BURDWAN.

THE 3RD DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 226.

*Appeal from the decision of Naziroodeen Mohamed, Moonsiff of Culna,
dated the 30th June 1846.*

Doopraj Singh Raee and others, (Defendants,) Appellants,
versus

Durp Nurain Race and others, (Plaintiffs,) Respondents.

JUDGMENT.

THIS plaint was laid to recover from the defendants, appellants, the value of crops, amounting to rupees 30-1, which they had taken from the plaintiffs. In the investigation before the moonsiff, it was clearly proved that the plaintiffs had the right to the crops, for they cultivated the lands, and held them under a valid pottah; and it is equally clear, that defendants, appellants, dispossessed the plaintiffs, respondents, of the crops. The moonsiff decreed the case in favor of the plaintiffs, and there existing no grounds whatever to disturb his judgment, it is accordingly confirmed, and the appeal dismissed.

THE 3RD DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 258.

*Appeal from the decision of Sreekunth Singh, Moonsiff of Samuntee,
dated the 24th July 1846.*

Gour Nath Kooer, (Plaintiff,) Appellant,
versus

Goluk Goopt and others, (Defendants,) Respondents.

JUDGMENT.

THE plaintiff instituted this suit before the moonsiff, to recover from the defendants a bhynameh and other documents, relative to the purchase of some land, which the plaintiff stated, he had bought at a sale held in execution of a decree, and which land, the defendants state, they themselves bought benamee, through the agency of the plaintiff, appellant, who executed, they state, an ikrar, setting forth that though he had bought the land in his own name, yet he had no right whatever to the property, which the defendants had supplied him with the money to pay for. The moonsiff dismissed

the plaint, not deeming the evidence adduced by plaintiff worthy of credit. The plaintiff and appellant denies having ever executed any ikrar of the nature above alluded to, and states that the one produced is a counterfeit document. In my opinion the moonsiff's enquiry is incomplete, for of six witnesses, whom the plaintiff summoned to prove his plaint, only three were examined, and these the moonsiff without sufficient reason doubts, and hence, I think, the absolute necessity arises of his calling before him the remaining three. Under these circumstances, I send back the case to the moonsiff to complete the enquiry.

THE 5TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 291.

Appeal from the decision of Mahomed Saeem, Sudder Ameen Moonsiff, dated the 24th August 1846.

Suksee Munee, widow, and others, (Defendants,) Appellants,
versus

Shooda Mye Dasse, (Plaintiff,) Respondent.

JUDGMENT.

THE plaintiff sued, in this case, to recover from the defendants, appellants, fifty rupees, the value of some wood.

The claim of the plaintiff having been established by the evidence of witnesses, to the satisfaction of the sudder ameen moonsiff, he decreed the case in favor of plaintiff, respondent. From this judgment the defendants appeal, alleging that they are not indebted to nor ever had any dealings with the plaintiff of the nature alluded to. Beyond this denial of the debt, the defendants have been unable to bring forward any thing to disprove or refute the plaintiff's demand, and there being no grounds to disturb the decision of the lower court, it is confirmed, and the appeal dismissed.

THE 8TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 206.

Appeal from the decision of Nazirooddeen Mahomed, Moonsiff of Culna, dated the 15th June 1846.

Soobul Chunder Puramanick, (Defendant,) Appellant,
versus

Sheikh Allee and others, (Plaintiffs,) Respondents.

JUDGMENT.

THIS suit was instituted before the moonsiff of Culna, to set aside an award of the revenue authorities under Regulation V. 1812.

The appellant complained in the collector's court against Ineoodeen and others, to recover balance of rent due by them to him, as farmer of Gowara, and obtained a decree in his favor, and sold the sugar cane, &c., belonging to Budurooddeen and Sheikh Allee, respondents, in satisfaction of the demand against Ineoodeen and others. The first point to be ascertained is, if the property sold, really belonged to Sheikh Allee and Budurooddeen, respondents, or to Ineoodeen and others, against whom only the decree had been passed. The moonsiff decided this point in favor of the respondents, who proved that the property sold was really and truly theirs, and not that of Ineoodeen and others. The plaintiffs laid their claim to the amount of 141 rupees, and the moonsiff decreed it to the value of rupees 94, whereas the amount actually realized by the sale was rupees 38, 15 annas, 10 gundahs; and the second point to be considered is, whether the appellant is liable to the extent of the plaintiff's claim, or to that arising from the sale of plaintiff's property, or that decreed by the moonsiff. From the evidence before the moonsiff, it is established, that the real amount of property improperly and fraudulently sold was rupees 94, for which I am of opinion that the appellant is justly liable to pay to the respondents. I accordingly confirm the moonsiff's judgment, and dismiss the appeal.

THE 8TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 205.

*Appeal from the decision of Naziroodeen Mahomed, Moonsiff of Culna,
dated the 15th June 1846.*

Soobul Chunder Puramanick, (Defendant,) Appellant,

versus

Sheikh Allee, (Plaintiff,) Respondent.

JUDGMENT.

THIS case is of a similar nature to No. 206 this day decided, and for the same reasons a similar judgment is passed.

THE 8TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 1228.

Appeal from the decision of Ghulam Pyumber, Moonsiff of Mungulcote, dated 30th June 1846.

Pearree Muneo Dossya and others, (Defendants,) Appellants,

versus

Surba Nund Doss and others, (Plaintiffs,) Respondents.

JUDGMENT.

THE plaintiffs instituted this suit for the possession of an 8 annas' share of a tank, which had been mortgaged to their ancestors by the defendants. The notice required by the law having been proved before the moonsiff to have been duly served, and having given to the case every necessary enquiry, he decided the suit in plaintiffs' favour, and the sale became consequently absolute.

From this decision the defendants now appeal, and as it clearly appears from the record that the appellants, during the year allowed by law from the date of the notification, took no steps whatever to contest the point in dispute or to redeem the property mortgaged, I can see no reason whatever to interfere with the moonsiff's decision, which is accordingly confirmed.

THE 9TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 237.

Appeal from the decision of Pearee Mohun Banerjee, Moonsiff of Kytee, dated the 29th June 1846.

Ootum Churn Dutt, (Defendant,) Appellant,

versus

Anund Mye Dassee, (Plaintiff,) Respondent.

JUDGMENT.

THIS was a suit preferred to recover a deposit of 26 rupees, 1 anna paid by the plaintiff on account of rent due to the defendant, who had claimed it on account of a tank and some land adjoining it, and to stay the sale the plaintiff paid the amount. The defendant, appellant, urged his right to rent, in virtue of a kubala, said to have been granted by the respondent's ancestors: but this document the moonsiff rejected, deeming it an invalid one, and consequently decreed the case in favor of the plaintiff, respondent. From this decision the defendant now appeals, and, on a revision of the moonsiff's proceedings, it appears that he has entirely omitted to take any

notice of an ikrar, written and delivered by the plaintiff, respondent, to the furosh ameen, employed for these sales, acknowledging that the demand against her was a true and just one, to adjust which she paid the money. I am of opinion that this case must be returned to the moonsiff; for this ikrar given in by the plaintiff requires to be enquired into, and its validity or otherwise ascertained. Under these circumstances, the case must be sent back for re-investigation.

THE 10TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 305.

Appeal from the decision of Gopal Chunder Ghose, Moonsiff of Bhattooreah, dated 26th August 1846.

Bungsee Ghose and others, (Defendants,) Appellants,

versus

Ram Komar Huldar, (Plaintiff,) Respondent.

JUDGMENT.

THIS case was preferred for the recovery of a bond debt with interest, amounting to rupees 145, 3 as., 5 g., which the moonsiff decided in favor of the plaintiff, respondent. The defendants appealed from this judgment, and state, the plaintiff from enmity has got up this case against them, and had the bond written, but that they, the appellants, neither signed it nor borrowed the money. From the proceedings held before the moonsiff the bond was duly attested, and there are no grounds whatever to conclude it an invalid one, or that the plaintiff was actuated by malicious motives, and got up the case against the appellants. I therefore uphold the moonsiff's decision and dismiss the appeal.

THE 10TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 311.

Appeal from the decision of Pearee Mohun Banerjee, Moonsiff of Kytee, dated the 5th September 1846.

Jai Hurry Pal, (Plaintiff,) Appellant,

versus

Ukoor Jus and others, (Defendants,) Respondents.

JUDGMENT.

THIS case was instituted for the recovery of the balance of a bond debt amounting to rupees 43, 7 as., 6½ gundahs. The moonsiff, not deeming the bond a genuine document, and one of the subscribing witnesses having denied all knowledge of the bond, dismissed the plaint, from which decision the plaintiff now appeals. In my opinion the moonsiff's judgment is a perfectly correct one, for the bond is of

a most suspicious nature. It appears to have been written on paper purposely soiled, and has erasures on it. I accordingly confirm the moonsiff's decision, and dismiss the appeal.

THE 11TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 76.

Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan, dated the 13th February 1846.

Ram Koomar Ghose, (Defendant,) Appellant,

versus

Kishen Chunder Roy, (Plaintiff,) Respondent.

JUDGMENT.

THIS and the following case, No. 87, were instituted before the moonsiff, to set aside an award of the revenue authorities under Regulation VII. 1799. The plaintiff claimed, at the expiration of the first quarter of the year, one-fourth of the juma for the whole year, but had neither granted pottah nor received a kubooleut, nor was any kistbundy to be produced.

There is no dispute between the parties as to the amount of the annual juma, and the only point for consideration was, whether the plaintiff was entitled to a quarter of the annual rent at the end of the first quarter. This was decided by the moonsiff in favor of the plaintiff, and from this decision the defendant has appealed.

From the enquiries I have made, and from perusal of decrees which have been passed on the point, I find that such has been and is still the practice in this district in many parts of it, and to enable the dur-putneedar to pay up his kists, I can see nothing objectionable or unfair in the demand, in the absence of kubooleuts, or kistbundies; and under these circumstances I confirm the moonsiff's decision, dismissing the appeal.

THE 11TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 87.

Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan, dated the 23d February 1846.

Sreekunth Moojoomdar and others, (Defendants,) Appellants,

versus

Kishen Chunder Roy, (Plaintiff,) Respondent.

JUDGMENT.

THIS case being similar to No. 76, this day decided, the same order is passed on this as on the preceding one.

THE 11TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 324.

Appeal from the decision of Sreekunth Singh, Moonsiff of Samuntee, dated the 29th August 1846.

Budun Chund Sircar, (Defendant,) Appellant,

versus

Beharree Lall Misser, (Plaintiff,) Respondent.

THIS case was preferred before the moonsiff for the possession of three beegahs of land, valued, with the crops stated to have been taken by defendant, at rupees 130, annas 8, gundahs 4.

From the proceedings held in the enquiry before the moonsiff, it appears that both parties produced kubalas for the land in dispute. The moonsiff, after a full investigation into the merits of the case, gave a decree in favor of the plaintiff; and from this judgment the defendant now appeals. The only point that seems essential to be enquired into is, which of the kubalas is the valid one; and in admitting that of the plaintiff, respondent, and rejecting that of the defendant, appellant, the moonsiff has to my judgment given a very correct judgment; for the one produced by the defendant, appellant, is suspicious, and several of his witnesses, whose names are subscribed, as evidence of its execution, deny all knowledge of the deed; whilst that of the plaintiff, respondent, is free from all suspicion, and has been satisfactorily proved, by the evidence adduced by the plaintiff to establish his claim. Under these circumstances, I confirm the moonsiff's decision, and dismiss the appeal.

THE 14TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 1.

Appeal from the decision of the Collector under Section 30, Regulation II. 1819, dated the 10th July 1846.

Maun Govind Biswas, (Plaintiff,) Appellant,

versus

Muheish Chunder Kuberaaj, and others, (Defendants,) Respondents.

THIS is an appeal under Regulation II. of 1819. The plaintiff and appellant sets forth that the land in dispute (being 2 beegahs, 16

cottahs) is *khirajee*, whilst the defendants, respondents, declare it is *lakheraj*, and that they purchased the same in 1246 B. S. In the proceedings before the collector, the plaintiff was unable to establish his claim, whilst the defendants proved by satisfactory documents that the land was *lakheraj*; and under these circumstances he dismissed the case; and as I see no reason whatever to differ from this opinion, I dismiss the appeal.

THE 15TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 6.

Appeal from the decision of Moulovee Fuzul Rubbee, Principal Sudder Ameen, dated 13th August 1846.

Neelkunt Bhuttacharj, (Defendant,) Appellant,

versus

Meer Dad Ali, (Plaintiff,) Respondent.

JUDGMENT.

THIS appeal was preferred to set aside an order regarding the payment of costs in a case which the principal sudder ameen had nonsuited, and is unconnected with the merits of the case itself. In the decree passed by the principal sudder ameen, it is ordered that the costs of suit are to be paid by the plaintiff "*according to the Regulations.*" The appellant sets forth, that the words "*according to the Regulations*" were not written at the time the judgment was delivered, and he is consequently entitled to receive the *full* amount of costs. In the account of costs detailed at the foot of the decree, only a moiety of the costs is made payable to the defendant, appellant, and from this account the defendant now appeals. The principal sudder ameen was called upon by me to answer distinctly and truly, if any additions had been made to the order regarding costs, for there is certainly some appearance that some words had been added, and some are written on the margin of the paper. The principal sudder ameen most positively declares in reply, that no alteration had been made in the order passed by him; but that the mohurrer who writes his daily book or *roznamchah*, had at first omitted the words "*according to the Regulations,*" and that this omission was immediately and at the time rectified; and that no alteration in the judgment passed by him was or had been made. It appears to me that the order passed by the principal sudder ameen touching the costs is correct, and that the defendant is entitled only to one-half of the costs, with reference to No. 1052, of the Construction Book, the whole of the pleadings only have been filed. I therefore dismiss the appeal, upholding the judgment of the principal sudder ameen.

THE 15TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 7.

Appeal from the decision of Mouluvee Fuzul Rubbee, Principal Sudder Ameen, dated the 13th August 1846.

Kisto Chunder Roy, (Defendant,) Appellant,

versus

Meer Dad Ali, (Plaintiff,) Respondent.

JUDGMENT.

THIS case is precisely similar to No. 6 this day decided, and the same order is passed upon it.

THE 15TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 8.

Appeal from the decision of Mouluvee Fuzul Rubbee, Principal Sudder Ameen, dated 13th August 1846.

Chuckun Lall Roy, (Defendant,) Appellant,

versus

Meer Dad Ali, (Plaintiff,) Respondent,

JUDGMENT.

THIS case being precisely similar to No. 6 this day decided, the same order is applicable.

THE 15TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 9.

Appeal from the decision of Mouluvee Fuzul Rubbee, Principal Sudder Ameen, dated 13th August 1846.

Neelkunth Bhattacharj, (Plaintiff,) Appellant,

versus

Meer Dad Ali, (Defendant,) Respondent.

JUDGMENT.

THIS suit was preferred before the principal sudder ameen to obtain a dakhila or receipt for rupees 3703, the amount of rent, alleged to have been paid by the plaintiff to the defendant. The principal

sudder ameen dismissed the plaint, not deeming the plaintiff to have established it, and from this decision the plaintiff now appeals. It appears to me, from a revision of all the proceedings, that as the plaintiff, appellant, filed his jumma khurch, in which the transmission of the above, named amount is entered, and the evidence of the plaintiff's witnesses states that they took the money to defendant, respondent's, kutcherry, where Meer Dad Ali himself was at the time, and desired the amount brought to be entered in his accounts, by his dewan, that the principal sudder ameen ought to have called for the respondent's khatta or other account book, and having examined it, there is no doubt I think that it would have shewn at once if the amount had ever been brought or not. And as the principal sudder ameen has omitted this most essential point in his enquiry, I consider it incomplete, and therefore return it to him for revision.

THE 16TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 252.

Appeal from the decision of Moulvree Ali Hyder, Moonsiff of Bamunara, dated 28th July 1846.

Bissumber Beeda Bhoosun, (Claimant,) Appellant,

versus

Beepin Beharree Ghose and others, (Plaintiffs,) Respondents.

JUDGMENT. •

THIS case was preferred before the moonsiff of Bamunara to recover balance of rent for 1252 B. S., amounting to rupees 5-14, which the moonsiff decreed in favor of the plaintiffs. It appears to me that the moonsiff's decision is correct; for he has taken the deposition of three witnesses, who prove that the rent is due by the defendants in the case before him (named Hullodhur Ghose, &c.,) but who did not attend the moonsiff's court, and on the institution of the appeal in this court, those defendants have declared that the demand of the plaintiffs, respondents, is a debt justly due by them to the plaintiffs; but it would appear, that the plaintiffs urge their right to hold the land in question, under a mocurreree pottah, granted by Bissumber Beeda Bhoosun, who has preferred this appeal; in which he sets forth, that the mocurreree pottah is a forgery, and that he never granted it at all to the plaintiffs, respondents. This point is not now however contested before the court, and in upholding the moonsiff's decision regarding the rent, it is clearly to be understood that this decree is not to interfere with the rights and interests to the lands in dispute, should the validity of the mocurreree pottah produced in court be hereafter made the subject of a regular suit.

THE 16TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 253.

*Appeal from the decision of Mouluee Ali Hyder, Moonsiff of
Bamunara, dated the 27th June 1846.*

Bissumber Beeda Bhoosun, (Claimant,) Appellant,

versus

Sheikh Nowajee and others, (Plaintiffs,) Respondents.

JUDGMENT.

THIS case is connected with the one No. 252, decided this day. The plaintiffs solicited to receive a dakhilah from Beepin Beharry Ghose, &c., for six rupees, on account rent paid to them, which the moonsiff decided in favor of the plaintiffs, respondents; and the appellant in this case urges, that Beharry Ghose, &c., can have no right to grant dakhilahs for rents to which they have no legal title, the mocurreree pottah under which they claim, being, as alleged by the appellant, a forgery. The plaintiffs, respondents, are, to my judgment, entitled to receive a receipt or dakhilah for the rent they have paid, to Beepin Beharry Ghose, &c., under the impression that they were the persons entitled to receive the same, and to whom the plaintiffs state themselves to be justly indebted. The moonsiff's decree solely as it relates to the granting of a dakhilah, is upheld; but it cannot be held to affect in any way the rights of those, who may hereafter make the mocurreree pottah the subject of litigation. ..

THE 17TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 284.

*Appeal from the decision of Gopal Chunder Ghose, Moonsiff of
Bhattooreah, dated 22nd August 1846.*

Ishur Chunder Chuckerbutty and others, (Plaintiffs,) Appellants,

versus

Goluck Chunder Bundhoo and others, (Defendants,) Respondents.

JUDGMENT.

THIS suit was preferred to recover the sum of rupees 281, 9 annas, 9 gundahs, the amount of a kistbundy, with interest. The moonsiff dismissed the case, as the defendants produced a receipt for the amount due to the plaintiffs, appellants. They (the appellants) deny the genuineness of the receipt produced by the respondents, defendants, but it was duly attested and established before the moonsiff; besides which, it appears that the suit was not preferred within the

period prescribed by law: there can therefore be no reason whatever to interfere with the moonsiff's decision, which is upheld, and the appeal dismissed.

THE 17TH DECEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 300.

*Appeal from the decision of Nazirooddeen Mahomed, Moonsiff of
Culna, dated the 2nd September 1846.*

Nubkoomar Nundun, (Plaintiff,) Appellant,

versus

Hulodhur Huldar and others, (Defendants,) Respondents.

JUDGMENT.

THIS plaint was preferred to recover the amount of a bond debt with interest, rupees 282, 10 as., 13 g., 1 c., which the moonsiff dismissed. The plaintiff, being dissatisfied with this decision, has appealed from it.

From a revision of the proceedings of the lower court, I am of opinion that the moonsiff's judgment must be set aside; for the bond itself is clearly proved by the subscribing witnesses, and bears not the slightest appearance of being an invalid or counterfeit document, and, above all, it appears that defendants were at one time desirous of compromising the claim, and asked for some remission of the interest that had accrued. The reasons given by the moonsiff for dismissing the plaint are not to my judgment satisfactory. I therefore decree the appeal, and the decision passed by the moonsiff is set aside.

ZILLAH WEST BURDWAN.

THE 3D DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 34 of 1846.

Appeal from the decision of Kazee Hamid Ally, Moonsiff of Sonamookhy, Zillah West Burdwan.

Purshaud Seet, (Defendant,) Appellant,

versus

Mutronauth Roy, (Plaintiff,) Respondent.

PLAINTIFF asserts that the defendant holds 53 beegahs, 7 kottahs of land, at a low rent in mouzahs Duloot, Gope mehal, and Utur Dhurecapoor, belonging to his putnee talook lot Utur Dhurecapoor: the full rent of the mouzahs is 137 rupees, 12 annas. I served the usual proclamation upon defendant in conformity to Regulation V. of 1812; but he failed to appear. I therefore prefer this suit to fix the rent of defendant's land at the rate of 137 rupees, 12 annas.

Defendant, Pershaud Seet, says in his reply that he is in possession in the mouzahs above-mentioned of 23 beegahs, 15 kottahs of rent paying land, the rent of which was fixed by the former talookdar at 35 rupees, 6 annas, from whom I obtained a puttah and executed a kubooleent in his favour on the 7th Bysack 1231. I hold decrees in proof of this rent. Plaintiff purchased the talook from the former talookdar under a koosh kuwalu, he cannot therefore enhance the rent of the ryots who hold their land at a fixed rate, &c. &c.

The moonsiff of Sonamookhy passed judgment in favour of the claim, assessing 23 beegahs, 6 kottahs, 12 gundahs of land at the rent of 60 rupees, 9 annas, 4 gundahs, 1 cowree. Defendant prefers this appeal.

On consideration of the proceedings I deem the investigation to be incomplete, and that the case must be remanded for further enquiry, because it was necessary to call for proof on the part of the defendant, appellant, that the puttah said to have been received by him from the former talookdar was given to him, and that he had subsequently paid rent at that rate, and the talookdar plaintiff should have been called upon to shew that, after the date of the puttah, defendant has paid an increased rent thereon, for until that point is decided no enquiry can take place whether defendant's lands are liable to assessment. The appeal is therefore decreed, and the decision of the moonsiff reversed, and the proceedings are to be returned for further enquiry in the manner above-mentioned, after which a decision on the merits of the case and relative to costs will be given. The value of the stamp in appeal is to be refunded to the appellant.

THE 3D DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 132 of 1846.

*Appeal from the decision of Baboo Ramtunnnoo Roy, Moonsiff of Burjoru, Zillah West Burdwan.*Manick Gurooe, Subhul Gurooe, and Bindrabund Gurooe,
(Defendants,) Appellants,*versus*

Anund Gurooe, (Plaintiff,) Respondent.

PLAINTIFF states that in mouzah Saluka there is a jor named Saluka jor, which flows from east to north, and the lands of the mouzah are irrigated from the water of the jor: the defendants have some land in the mouzah, and I plaintiff hold 10 beegals therein: defendants' land is first irrigated from the current of water and afterwards my land is irrigated therefrom. There was a dispute formerly respecting this jor, and I brought my suit thereon, case No. 226, and obtained a decree in my favour. There was also a complaint brought before the magistrate, having reference thereto, which was also decided in the month of Srabun 1251. Defendant, Bindrabund Gurooe, closed up a passage through which the water ran into my fields, and he made a new nulla through which the water flows into his own newly cultivated land, and in consequence of my lands not being sufficiently watered, my crops are injured. I therefore sue to have the water course opened as before, and for the value of the crops injured, laying my claim at 187 rupees.

Defendant, Bindrabund Gurooe, in his answer states that plaintiff's land and that of the other ryots in the mouzah is cultivated from the rain water, and not from the current of water from the jor, there was no water course by which plaintiff's lands are watered, and I never closed it up, &c. &c.

Subhul, Manick, &c., defendants, reply to the same effect.

Doorgachurn Maun, defendant, answers to the same purport as plaintiff.

The moonsiff of Bujorah decreed the claim of plaintiff.

Defendants, Bindrabund, Subhul Gurooe, &c., prefer this appeal therefrom; but after perusal of the proceedings, I consider the decision of the lower court to be correct, because it is quite clear from the evidence, ameen's report, and his deposition taken on affirmation this day before this court, that first the land in the occupation of the defendants was watered from the jor, and then plaintiff's land was irrigated from the water flowing through his water course, and this the defendants have closed up, it is therefore proper that the water course should be re-opened and plaintiff's land watered therefrom as heretofore. Coin-

ciding therefore in opinion with the decision of the lower court, the appeal is dismissed, and the decree of the moonsiff of Burjorah affirmed, with costs of appeal payable by appellants.

THE 4TH DECEMBER 1846.

PRESENT : E. DEEDES, JUDGE.

Case No. 18 of 1846.

Appeal from the decision of Roy Chunder Seekur Chowdry, Principal Sudder Ameen of West Burdwan.

Jugissur Mookerjee, (Defendant,) Appellant,

versus

Gungapersaud Ghose, (Plaintiff,) Respondent.

THIS suit is brought by plaintiff, under the following circumstances : He states, he purchased at auction under Regulation VIII. of 1819, lot Doongalon, included therein is a tank named Acharj pokur, containing 2 beegahs of land, the western bank of the Pooniu tank, the eastern bank of the Bhoom tank, and some fallow land. In Bysack 1251 the defendant, Jugissur Mookerjee, excavated a tank in that place, which, with the banks, contain 5 beegahs of land. I preferred my suit for the rent of the land, 5 rupees, in the moonsiff's court, but as the defendant claimed the land as his lakheraj, the case was struck off the file.—I therefore sue to set aside the objections of the defendant that the land is rent free, and for my rights therein as rent paying, and for 5 rupees, rent for 1251, laying my action at 147 rupees.

Jugissur Mookerjee, defendant, in his defence states that the Acharj pookur is rent free, and was so previous to the Company's era; on the 10th Pous 1239, I purchased it from the former proprietors Brijmohun Acharj, &c., and excavated the tank, holding possession accordingly, &c. &c.

The principal sudder ameen decreed to plaintiff his rights in the tank, as rent paying.

Defendant prefers this appeal, but after a careful revision of the proceedings, and the report of the collector, I am of opinion that the decision of the lower court is correct and proper, because there is no proof that previous to the decennial settlement the tank was held as rent free, and the defendant, appellant, has been unable to produce a taidad or other document in proof of his rent free rights. Seeing therefore no grounds for admitting the appeal, the decision of the principal sudder ameen is affirmed, in accordance with Clause 3, Section 16, Regulation V. of 1831.

THE 8TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 154 of 1846.

Appeal from the decision of Baboo Ramtunnoo Roy, Moonsiff of Burjorah, Zillah West Burdwan.

Budun Sirdar, (Defendant,) Appellant,

versus

Khetoo Mirdha, (Plaintiff,) Respondent.

THE petition of plaint states that when plaintiff compared accounts with Oojul Sirdar, deceased, the sum of 7 rupees, 6 annas was found to be due by him, and therefore, on the 18th Kartick 1240, he executed an instalment bond conditioning to pay the amount due between the years 1241 and 1243. During his lifetime Oojul Sirdar did not pay any part of the amount due, but after his, Oojul's, decease, in Cheit 1245, the defendant paid 2 rupees. The balance due being unpaid, I sue defendant, Budun, as the heir of Oojul Sirdar, for the amount, with interest, being 13 rupees, 6 annas.

Defendant, Budun Sirdar, in answer acknowledges that his father, Oojul, executed the kisteebundee, but says in Jheit 1243, during his lifetime, he paid 5 rupees, and subsequent to his death, in Cheit 1245, I gave to plaintiff rice to the value of 2 rupees. Plaintiff has brought this suit without deducting the 5 rupees paid by my father, Oojul Sirdar, &c. &c.

The moonsiff of Burjorah decreed plaintiff's claim.

Defendant prefers this appeal, but after perusal of the record I consider the decision of the lower court to be correct, because although 1 month and 18 days elapsed since appellant was called upon by the moonsiff to produce proof of his father Oojul having paid 5 rupees, yet he failed to do so, and I cannot perceive any grounds for allowing him further time to produce evidence on this point. Seeing therefore no grounds for admitting the appeal, the decision of the moonsiff is affirmed, in accordance with Clause 3, Section 16, Regulation V. of 1831.

THE 9TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 392 of 1845.

Appeal from the decision of Moulouee Abdool Uzeez, Moonsiff of Oundah, Zillah West Burdwan.

Gudadhur Banerjee, (Defendant,) Appellant,

versus

Punchanund Biswas, (Plaintiff,) Respondent.

PLAINTIFF states that lot Cheitungunge is included in pergunnah Bishenpoor; it contains 39 mouzahs, at the rent of rupees 300. In

the beginning of 1243, the lot was sold on account of arrears of the former talookdar Neemye Neogee, and I purchased it. Included in the putnee is a punchukee mouzah called Neebra Machra, which the talookdar of lot Rambaud is illegally in possession of. I sued for possession of this with other mouzahs in case No. 1750, and obtained a decree in my favour, but on appeal, I was nonsuited, because I had claimed possession of several mouzahs, in one suit. I therefore prefer my claim for possession on the mouzah, or for a reduction in the rent paid by me, and for mesne profits, laying my action at 272 rupees, 10 annas.

Defendant, Moha Rajah Mohatabchund Bahadoor, states in reply that there are several mouzahs in pergunnah Bishenpore which have the same name, and the talookdars of the lot they are included in are in possession thereof; if a punchukee mouzah is included in any lot, the talookdar thereof is not entitled to possession of an arazee mouzah; in plaintiff's deed of sale there is included a punchukee mouzah called Neebra Machra, the rent of which is 9 rupees, 6 annas, for which an engagement has been entered into with the putnee talookdar of lot Cheitungunge: the talookdar of Rambaud has no interest therein; in lot Rambaud there is an arazee mouzah named Neebra and an arazee mouzah called Machra, for which an engagement has been entered into with the proprietor of Rambaud. After enquiry and investigation into the documents of both talookdars, the real circumstances of this case will appear, plaintiff is not entitled to a reduction of jumma from me, &c. &c.

Defendant, Gudadhur Banerjee, in his answer states that plaintiff is not the talookdar of a punchukee mouzah or an arazee mouzah but of a punchukee jumma; there is an arazee mouzah Neebra and an arazee mouzah Machra, which are included in any putnee talook lot Rambaud, and which have always been in possession of the putnee talookdar, &c. &c.

The moonsiff of Oundah passed judgment in favour of the claim of plaintiff against the ryots and putnee talookdar of lot Rambaud. Defendant, Gudadhur Banerjee, alone appeals. I am of opinion, after perusal of the evidence and on inspection of the documents in this suit, that the decision of the lower court is improper and must be reversed, because it is clear from the evidence of Neudhur Chuckerbetty, Khettermohun Gungolee, and Gudadhur Chuckerbetty, taken in case No. 1750, and copies of whose depositions have been produced by plaintiff, respondent, in this suit, that the former talookdars of lot Rambaud have realized rent from the ryots of this mouzah since the year 1217, and there is no proof that the putnee talookdars of lot Cheitungunge have subsequently held possession thereon, or intermediately realized rent from the ryots of this mouzah; and since plaintiff only purchased the rights of the former putnee talookdar of lot Cheitungunge, he is only entitled to possession of the land held by him; moreover as it is evident that the mouzah in dispute has been

held for upwards of 20 years by the putnee talookdars of lot Ram-band, then plaintiff's suit cannot be listened to under Section 14, Regulation III. of 1793. The appeal is therefore decreed and the decision of the moonsiff of Oundah reversed, and the suit of plaintiff is dismissed, costs of suit in both courts being payable by plaintiff, respondent.

THE 10TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 17 of 1846.

Appeal from the decision of Kaze Nazuruddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddunmohun Baboo, Executor on the part of Khettermohun Baboo, nabalegh son of Juggomohun Baboo, deceased, (Plaintiff,) Appellant,

versus

Sheikh Khidmut, Sheikh Usmut, Sheikh Ruhmut, and their security Sheikh Aulum, (Defendants,) Respondents.

PLAINTIFF states that the defendants Sheikh Khidmut, &c., on the security of Sheikh Aulum, defendant, borrowed from Juggomohun Baboo, deceased, on the 28th Bhadoor 1248, rupees 49, conditioning to pay the amount in Maugh of that year, and they executed separate bonds; in Assin 1251, 7 rupees, 1 anna were paid; the balance being unpaid, I sue defendants for the amount due, with interest, 63 rupees, 15 annas, 10 gundahs.

Sheikh Khidmut, &c., defendants, deny borrowing the money from plaintiff, and the execution of the bond, &c. &c.

Sheikh Aulum, defendant, denies having become security for the debt, and states further that on the 28th Bhadoor he recovered rents from the ryots of the Dhurumpore village, and therefore he could not have executed the security bond on that date. This suit is brought against me from enmity, &c. &c.

The moonsiff of Indoss dismissed the suit, because he considered that defendant, Aulum Sheikh, had proved the objections urged in his defence.

Plaintiff, appellant, prefers this appeal. Having perused the evidence adduced by both parties and on inspection of the documents and the khata or account book produced by appellant pending the appeal, I consider the decision of the lower court to be incorrect, and that it must be reversed, because it appears from the account book of appellant that 49 rupees are entered therein as having been lent to the defendants, Sheikh Khidmut, &c., on the security of Aulum Sheikh, on the 28th Bhadoor 1248, and I see nothing to induce me to suppose that the khata book is not entitled to credit; moreover it

is clearly proved by plaintiffs' appellants' witnesses that the defendants borrowed on the date above mentioned from Juggomohun Baboo, the ancestor of appellant, the sum above alluded to, and executed separate bonds, and although three witnesses on the part of the defendant, Alum Sheikh, depose that they paid rent to him in the village of Dhurmpore on the 28th Bhadoor, and Aulum, respondent, in corroboration thereof, has produced some seeah papers, yet I cannot place any reliance thereon; moreover although the defendants acknowledged the notice served upon them, yet they did not put in their answer to the plaint until a long period after the receipt thereof. For the above reasons therefore the objections urged by them are disentitled to credit, and the appeal is decreed, the decision of the moonsiff being reversed, and plaintiff, appellant, will obtain from the defendants, Sheikh Khidmut, &c., and their security, Aulum Sheikh, the original sum sued for, 63 rupees, 15 annas, 10 gundahs, and interest, on the sum of 41 rupees, 15 annas, from the date of the suit to this date, 7 rupees, 8 annas, being a total of 71 rupees, 7 annas, 10 gundahs, with costs of suit in both courts, and interest to date of payment.

THE 10TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 455 of 1845.

Appeal from the decision of Nurrohuree Seeromonee, Moonsiff Sudder Ameen of Bancoorah, Zillah West Burdwan.

Rammohun Banerjee, (Plaintiff,) Appellant,

versus

Ramlochun Dutt, Mustt. Juggissuree and others, Defendants,
Respondents.

PLAINTIFF, appellant, states that he purchased at auction the putnee talook lot Senaputtee mehal; in the measurement papers in the suit against Soonder Mull, &c., and included in dag No. 47 are 5 kuttahs of land which belong to this lot, and which are in the possession of Ramlochun Dutt. I demanded rent from him, but he refused to pay it. I therefore sue for possession and rent of the land, laying my action at 14 rupees.

Kishenpershaud Pattuck, defendant, says in reply that the land in dispute belongs to his putnee talook lot Seeromoneepoor, and forms part of the Surak tank in my possession. In 1237 I gave the land in pottah to Nuncoo Dhobee, father of Radhalaal Dhobee, from whom I receive rent. The talookdar of the Senaputtee mehal has no interest therein, &c &c.

Radhalaal Dhobee, defendant, stated in reply that he obtained the land in dispute in pottah in 1237 from defendant, Kishenpershaud Pattuck, and first of all he gave it in pottah to Ununt Bhaee, after-

wards to Beerinchee, subsequently to Mutree Bukhtain, and eventually to Ramlochun Dutt, from whom he received rent, &c. &c.

Ramlochun Dutt, defendant, replies to the same purport as Radhaulaul Dhobee, &c. &c.

The moonsiff sudder ameen of Bancoorah dismissed the suit for want of proof.

Plaintiff, appellant, prefers this appeal; but after a careful consideration of the evidence adduced on both sides, I deem the decision of the lower court to be correct and proper, inasmuch as appellant has not proved the land to be included in his talook lot Senaputtee mehal, and from the evidence of some of his (appellant's) witnesses the possession and right of the talookdar of lot Seeromoneepoor is proved. Perceiving therefore no reason for disturbing the decision of the moonsiff sudder ameen, the appeal is dismissed, and the decision of the moonsiff affirmed, with costs of appeal payable by appellant.

THE 15TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 374 of 1845.

Appeal from the decision of Pundit Nurrohuree Seeromonee, Moon-siff Sudder Ameen of West Burdwan.

Gopaul Sirmah and others, Ghutwals, (Defendants,) Appellants,

versus

Lahar Singh, (Plaintiff,) Respondent.

PLAINTIFF states that the entire mouzah Sunkerhaut is his hereditary mokurruree jumma. Kalee Roy and Nubin Seet hold $9\frac{1}{2}$ beegahs of land therein, and Nubin Day has $6\frac{1}{2}$ beegahs: there are altogether 16 beegahs of land, of which I am in possession through my ryots. In Falgoun 1248, the ghutwal, defendants, dispossessed me therefrom by order of the joint-magistrate. I claim therefore possession with mesne profits, laying my suit at 296 rupees, 1 anna, 10 gundahs.

Gopaul Sutroogagn and Ramdhun Roy, ghutwals, defendants, state in reply that the whole of mouzah Sunkerhaut is not plaintiff's mokurruree jumma, there are therein 56 beegahs of land belonging to ghaut Seerampoor and occupied by 6 ghutwals, and there are other lands in the mouzah belonging to the ghutwals of other ghauts. On our being dispossessed of several beegahs of our ghutwallee land, we were put into possession by the order of the magistrate: and it is clear from the reply of plaintiff in the decree No. 4370, that he has only a small quantity of rent paying land in the mouzah, the remaining land being ghutwallee and rent free, &c. &c.

The moonsiff sudder ameen of Bancoorah decreed possession to plaintiff on the grounds that he considered it proved that the land was included in the mokurruree jumma.

The ghutwals, defendants, appeal from his decision. After perusal of the proceedings and evidence, and on consideration of the documents produced by both parties and the ameen's report deputed to make a local enquiry on the spot pending the appeal, and his deposition taken this day, and the chittahs and measurement papers of 1225, called for from the magistrate's office, I am of opinion that the decision of the lower court is improper and must be reversed, because plaintiff has not adduced proof of his having a mokurruree jumma in the mouzah Sunkerhaut, or, if he holds land therein at fixed rent, that the land under dispute is included therein, and it is clear from the ameen's report that the 16 beegahs of disputed land are included in the 56 beegahs, 5 kuttas of jageer ghutwallee land, measured in 1225, as belonging to mouzahs Sunkerhaut and ghaut Seerampoor, and although the measurement papers have not the signature of any one attached to them yet it appears from the roobokaree of the magistrate in the case of Subhul Chowdry dated 10th November 1818, that these chittahs were produced before him as they are mentioned therein, and from the purtul papers of the ameen lately deputed to the spot, it appears that the days correspond one with the other, there cannot therefore be any suspicion that these chittahs have been lately forged. Moreover it is evident therefrom that the ghutwals, defendants, have 56 beegahs, 5 kuttas of land in mouzah Sunkerhaut: the order of the magistrate therefore giving them possession of the 16 beegahs of disputed land which are included therein is correct and proper. The appeal is therefore decreed, and the decision of the moonsiff sudder ameen of Bancoorah reversed. The suit of plaintiff being dismissed, appellants' costs of suit in both courts and the costs of suit of the Government vakeel are payable by respondent, claimant, and the remaining defendants are to pay their own costs of suit.

THE 16TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 366 of 1845.

Appeal from the decision of Baboo Tarrakissen Holar, Moonsiff of Aosoogaon, Zillah West Burdwan.

Jugissur Banerjee Gomastah, (Defendant,) Appellant,

versus

Dwarkanath Chund and others, (Plaintiffs,) Respondents.

FROM the petition of plaint it appears that the defendant, Jugissur Banerjee, was appointed gomastah of mouzah Deesu on the 13th Sawun 1249, on the security of Ramkanye Banerjee: he was employed as gomastah from the beginning of 1250 to the 25th Maugh of that year, and within that period he collected rents from the ryots amounting to 949 rupees, 8 annas, 1 gunda, 1 cowree, 1 krant, of which

sum he sent in to plaintiff 826 rupees, 2 annas, defendant's salary, including miscellaneous expences, at the rate of 39 rupees per annum, is 23 rupees, 15 annas, 1 gunda, 1 cowree, 1 krant, plaintiff therefore received from him altogether 850 rupees, 1 anna, 1 gunda, 1 cowree, 1 krant: the balance of the amount collected, 99 rupees, 6 annas, not having been received, plaintiff sues defendant for the same, amounting with interest to 101 rupees, 6 annas.

Defendant, Jugissur Banerjee, acknowledges being appointed gomastah of the Deerasu mouzah, but denies having given security: he further states he collected from the ryots 949 rupees, 8 annas, 1 gunda, 1 cowree, 1 krant, and sent in to plaintiff 873 rupees, and by plaintiffs' order I have paid 135 rupees, 3 annas, 15 gundahs, besides this I have expended on account of plaintiff 9 rupees, my salary at 4 rupees per month amounts to 39 rupees, 5 annas, 7 gundahs, and the pooniah expences (expences incurred on the day when the tenants make the first payment of annual rents to their landlords) amount to 1 rupee, 10 annas, 10 gundahs, and the miscellaneous expences to 3 rupees, 14 annas, 15 gundahs, there is therefore an overplus due to me by plaintiff. Of the amount remitted to plaintiff, I have not received receipts for 182 rupees, 2 annas, &c. &c.

The moonsiff of Aeosgaon decreed plaintiffs' claim for 92 rupees, 14 annas, with interest and costs of suit, against defendant, Jugissur Banerjee, releasing the security.

Ramkonye Banerjee, appellant, prefers this appeal. Having perused the evidence on both sides and on consideration of the documents adduced by the parties, I deem the decree of the lower court to be correct, because notwithstanding that the appellant has been called upon pending the appeal to produce further evidence in proof of his defence, yet he has not done so. It is therefore ordered that the appeal be dismissed, and the decision of the moonsiff be affirmed, with costs of appeal payable by appellant.

THE 16TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

• Case No. 60 of 1846.

Appeal from the decision of Moulovee Asudoollah, Moonsiff of Radhanagore, Zillah West Burdwan.

Buddun Dhan, (Defendant,) Appellant,

versus

Neilmadhub Sircar, (Plaintiff,) Respondent.

PLAINTIFF states that in the arazee lot Beliara, mouzah Munohurpoor, Muthoor Dhan held a jumma which he resigned, and on the 17th Sawon 1249, I took the land in pottah from the former talookdar at the rent of 30 rupees, 6 annas, 8 gundahs, and paid rent to him accordingly; within this jumma, defendant, Buddun Dhan, has 3 bee-

gahs of land, and on the 25th Sawon 1249, he entered into an engagement with me to rent the land for 3 years, engaging to give the half produce of the land as rent. He gave me the half share of the crops for 1249 and 1250, but he has not given me the half share for 1251. I therefore sue him for the value of the crops, laying my action at 12 rupees, 8 annas.

Buddun Dhan, defendant, denies having executed the kubooleent in favour of plaintiff. The land in dispute with other lands belongs to my hereditary jumma of 12 rupees, and I pay the rent to the talookdar, it was not the jumma of Muthoor Dhan, &c. &c.

The moonsiff of Madhubunge decreed the claim for 8 rupees and 8 annas.

Defendant, Buddun Dhan, prefers this appeal. On consideration of the proceedings in this suit and the report of the ameen deputed to make a local enquiry pending the appeal, I deem the decision of the moonsiff to be correct, because plaintiff has satisfactorily proved his claim. It is therefore ordered that the appeal be dismissed, and the decree of the lower court be affirmed, with costs of appeal payable by appellants.

THE 16TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 82 of 1846.

*Appeal from the decision of Ramtunnoo Roy, Moonsiff of Burjorah,
Zillah West Burdwan.*

Muthoor Ghose and others, (Defendants,) Appellants,

versus

Bissumbhur Roy, (Plaintiff,) Respondent.

THIS suit is instituted by plaintiff under the following circumstances. He states mouzahs Tal Turee, &c., to be his hereditary mouhutan rent free property. The mouzahs were resumed by Government, and an engagement entered into by Government with plaintiff for the same; with these mouzahs there is in the name of Neetanund Ghose a saja jumma (a rent payable in kind) of 11 maps, 7 sullees, 11 seers, 5 chittacks, or 47 maunds, 31 seers, 5 chittacks of rice; on the death of Neetanund, the defendants, Muthoor, &c., as his heirs, held possession of the jumma. On the 21st Pous 1247, subsequent to my taking the land from Government, the defendants, Muthoor Ghose and Gungahurree Ghose, since deceased, gave me a fresh engagement to pay the above rent; they paid the entire rent for 1247, and in 1248 in consequence of a small quantity of their land being injured, the jumma was reduced to 44 maunds, 20 seers of rice. A portion of the rent for that year, and for 1249, I received, but no part of the rent for 1250 and 1251. I therefore sue for the value of the rice, laying my action at 61 rupees, 10 annas, 5 gundahs.

Mothoor, Joygopaul Ghose, &c., defendants, deny having executed the ikrar in plaintiff's favour. Previous to 1246 we held some land in the mouzahs above alluded to: in the resumption suit according to the measurement papers, we were in possession of 8 beegahs, 13 kuttahs, 11 gundahs of land, the rent of which was fixed at 6 rupees, 12 annas: we pay rent to plaintiff accordingly, &c. &c.

The moonsiff of Burjorah passed judgment in favour of the claim.

Appellants, Mothoor Ghose, &c., appeal therefrom; but after perusal of the proceedings, and evidence of both parties, and the ameen's report, I consider the decree of the lower court to be just and proper, because the defendants, appellants, have not proved their defence, and although they were allowed further time pending this appeal to produce proof in support thereof, yet they have failed to do so, and the claim of plaintiff, respondent, is satisfactorily established. Perceiving therefore no grounds for disturbing the decision of the moonsiff, it is therefore ordered, that the appeal be dismissed and the decree of the lower court affirmed, costs of appeal being payable by appellants.

THE 18TH DECEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 2 of 1846.

Appeal from the decision of Nurrohurree Seeromonee Pundit, Sudder Ameen of Zillah West Burdwan.

Gorachand Thakoor and others, (Defendants,) Appellants,

versus

Jadubind Roy, (Plaintiff,) Respondent.

PLAINTIFF states that on 12th Bysack 1236 he took in pottah from Brijomohun Banerjee, the former talookdar of mouza Kool Kool, 82 beegahs of fallow land, at the rent of 5 rupees, 2 annas, which he surrounded with a ditch and planted some mangoe cuttings and brought into cultivation 7 beegahs of land, holding possession through his ryots. Afterwards when Neilmonee Dibiya got the talook, she preferred a suit against me in the moonsiff's court, No. 3142, to fix the rent on this land. An ameen was deputed to make a local enquiry, and from his report it appears there were 80 beegahs, 15 kuttahs of land, which were assessed at the sum of 10 rupees, 2 annas, 10 gundahs. The talook was subsequently sold on account of arrears due by Neilmonee Debiya, and was purchased benamee by the ancestor of the defendants: he preferred an appeal from the decree in the nerikh suit, and while it was pending re-investigation the defendants took away the crops of the 7 beegahs of land belonging to my ryot Tunoo Gope, and they destroyed also about 1000 mangoe plants. The nerikh suit was eventually decided on re-investigation

by the moonsiff as before. The defendants dispossessed Tunoo Gope of the 7 beegahs of land in 1245, and in 1248 they dispossessed me of 25 beegahs of land belonging to my garden. I preferred my claim for possession thereon in the moonsiff's court, but was nonsuited because the suit had been preferred at an inadequate value. I now sue for possession, for the value of the damaged trees and for mesne profits, laying my action at 405 rupees, 13 annas.

Gorachand Thakoor, &c., defendants, in reply deny that the disputed land is included in plaintiff's garden, it is outside the ditch made by plaintiff, and has been under cultivation for a very long period, being now cultivated by Tunoo Gope: we did not dispossess plaintiff of the remaining land or destroy the mangoe plants, &c. &c.

The sudder ameen of Bancoorah passed judgment in favor of the claim for possession on the land, value of the trees destroyed, and for mesne profits, his decision being founded on the report of the ameen, from the evidence of plaintiff's witnesses who proved the land to be included in his garden and that the defendants had dispossessed him thereof, and from the reply of Tunoo Gope in a suit previously brought, and in consequence of defendants having failed to prove their allegations.

Defendants being dissatisfied prefer this appeal, but on consideration of the proceedings in this case, I am of opinion that the decree of the sudder ameen is correct, and that there are no reasons for disturbing it. One ground of appeal urged by the defendants is this, that in suit No. 150, preferred by them against plaintiff for arrears of rent, a decree was passed in their favour because plaintiff's possession of the land had been proved; and therefore they say that plaintiff is not entitled to mesne profits in this case. This point however is not worthy of attention, because plaintiff had at that time preferred his suit for possession of the land under dispute, and his being dispossessed thereon is satisfactorily established. The appeal is therefore dismissed, and the decision of the sudder ameen, Nurrohurree Seermonee, is affirmed: costs of appeal are payable by appellants.

ZILLAH CHITTAGONG.

THE 5TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 14.

Appeal from Moolvee Muneeroddeen, 1st Principal Sudder Ameen.

Kanai Singh, (Defendant,) Appellant,

versus

Hunooman Turbedie, (Plaintiff,) Respondent.

THIS is a suit for rupees 1169 and 4 pie, principal and interest, upon a bond for rupees 968.

The defendant admits having signed the bond, but explains the transaction in this way. He says that he was already indebted to plaintiff in the sum of rupees 250-5 on account of the price of some cloth, and being in want of money he applied to plaintiff, who agreed to lend him the sum of rupees 481 if he would execute a bond for rupees 968 on account of the sum to be thus advanced, and the rupees 250-5 he already owed him, and illegal interest and interest in advance upon both those sums; that he (defendant) consented and signed the bond, but that, as plaintiff was unable at the moment to pay him the sum to be lent, the witnessing of the deed was deferred till the afternoon, and that he left the bond with his signature to it, trusting to the plaintiff's promise to pay him, and considering the document to be incomplete; but that plaintiff never paid him, and that the bond was never witnessed and completed.

The principal sudder ameen considering it to be fully proved by ample evidence that the bond had been duly executed and witnessed, and that the money mentioned in it had been paid in full, and considering the story of defendant to be exceedingly improbable and to be unsupported by the only two witnesses he brought forward, decreed for the plaintiff.

The probabilities in this case are much in favor of the plaintiff. I see no reason to disturb the principal sudder ameen's decree, and I therefore dismiss the appeal with costs.

THE 9TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 15.

Appeal from Moolvee Muneerooddeen, 1st Principal Sudder Ameen.

Ram Ram Bose, Appellant, (Defendant,)

versus

Shorafut Alli and Ahmed Alli, Respondents, (Plaintiffs.)

IN this case the plaintiffs, in virtue of their being zemindars of turuff Mahomud Hossein, sue to assess 4 doons, 16 gundahs, 5 teels of land as goonzaish or surplus lands of talook Anunderam Bose, stating that at the time of the decennial settlement the talook was said to contain only 10 kanees, 5 gundahs, 3 couries, 2 kaks, at a jumma of Sicca rupees 7-3, but that at the Government measurement of 1242 R. S., there were found in possession of defendants 4 doons, 12 kanees, 15 gundahs, 6 kaks, 6 teels, and that defendants refuse to pay rent for the surplus lands.

Appellant, defendant, pleads that the talook having been in existence at the decennial settlement at a jumma of Sicca rupees 7-3, the plaintiffs, who are only zemindars by right of private purchase, can have no right to enhance the jumma, and he states that his ancestor obtained a jungle boorie pottah for the talook in 1177 B. S., with specified boundaries within which the lands in question are situated; and he also pleads the law of limitation in bar of plaintiffs' claim.

The pottah mentioned by appellant is not forthcoming, nor is there any evidence to shew when and under what conditions the talook was originally constituted. The principal sudder ameen, however, has held it to be sufficiently proved that the jumma of Sicca rupees 7-3, at the decennial settlement, was only assessed upon 10 kanees, 5 gundahs, 3 couries, 2 kaks, and he states that the jumma on that quantity of land certainly cannot be increased (and this I may observe is not sued for,) but that plaintiffs are fully entitled to an assessment now upon the surplus lands now found in their possession, and which in his opinion were not included in the assessment at the decennial settlement. The principal sudder ameen has decreed accordingly, having first ascertained the quantity of surplus lands in possession of defendants by the deputation of an ameen, and he has decided that the jumma he has now fixed shall be payable from the year in which the suit was brought, and has refused the claim for the rents of preceding years. And the principal sudder ameen quotes as a precedent for this decision the case of Khaja Arratoon, appellant, *versus* Doorgapermah Buttacharjay and others, Sudder Dewanny Reports, Vol. III. page 34.

The precedent quoted by the principal sudder ameen is exactly in point, and with reference to it I affirm the decree of the principal sudder ameen, and dismiss the appeal with costs.

THE 9TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 16.

Appeal from Moolvee Muneerooddeen, Principal Sudder Ameen.

Sharafut Alli and Ahmud Alli, (Plaintiffs,) Appellants,

versus

Ram Ram Bose, and others, (Defendants,) Respondents.

THIS is an appeal in the same case as appeal No. 15 this day disposed of. The appellants urge their claim to wassilut. But, under the precedent quoted in appeal No. 15, the decree of the principal sudder ameen is affirmed, and the appeal dismissed with costs.

THE 9TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 17.

Appeal from Moolvee Muneerooddeen, Principal Sudder Ameen.

Dewan Alli and Rohman Alli, (Defendants,) Appellants,

versus

Toofar Alli Serang, (Plaintiff,) Respondent.

IN this case it appears that the plaintiff, having purchased one half of talook Scrajdeen and obtained possession of a portion only of his purchase, sued the appellants for the remainder, and obtained a decree, adjudging that an ameen should be deputed to divide the talook into two equal parts between plaintiff and appellants. No provision however was made in the decree awarding mesne profits, and the plaintiff, having applied for mesne profits in the execution of his decree, was referred to a regular suit, the decree having been passed before the date of Circular Order 11th January 1839. The plaintiff, however, instead of bringing one action for the whole amount of his claim against appellants, has divided his claim into several parts, having already obtained a decree in the court of Mr. Snell, moonsiff, for wassilut upon a portion of the lands, and this suit is for wassilut upon another portion, and he states in his plaint his intention to bring yet another suit for the rents of another portion. He states as his reason for this mode of proceeding that the several portions on account of which he sues separately

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are in the cultivation of different jotedars; but I do not consider this to be a sufficient reason for his dividing his claim against the appellants. I am of opinion that the plaintiff must be nonsuited, I therefore reverse the decree of the principal sudder ameen in favor of the plaintiff, and decree the appeal, respondent paying the costs in this court, and nonsuit plaintiff.

THE 9TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 18.

Appeal from Moolvee Muneerooddeen, Principal Sudder Ameen.

Dom Alli Musst. Bi Khatum, (Defendants,) Appellants,

versus

Toofanee Serang, (Plaintiff,) Respondent.

THIS is an appeal in the same case as appeal No. 17, and, for the reason given in that case the plaintiff having been nonsuited, the decree of the principal sudder ameen is reversed, and the appeal is decreed, respondent paying the costs of this appeal.

THE 12TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 308.

Appeal from Khyrolla Sha, Moonsiff of Zorowargunge.

Birjokissen *alias* Becharam Sein and Radanath Sein, (Plaintiffs,)

Appellants,

versus

Judisthee and Musst. Sreemotee, (Defendants,) Respondents.

IN this case the plaintiffs sue to obtain possession, with mesne profits, of 2 gundahs of land, stating that defendant, Judistee, and Ram Monee, the late husband of Musst. Sreemotee, defendant, always cultivated the land till 1199 and paid rent, when they ceased to pay rent and refused to give up the land. The moonsiff, on proof that rent had been paid until the end of 1203 M. S., that in that year the land was given up as unprofitable as situated under the shade of trees, and that since then the land had lain fallow because no one would undertake to cultivate it, dismissed the claim. I see no reason to interfere with this decree, and dismiss the appeal with costs.

THE 12TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 318.

Appeal from Moolvee Gudah Hossein, Moonsiff of 1st Town Division.

Abdool Novie, Appellant, (Defendant,)

versus

Einudeen Kalifa, Respondent, (Plaintiff.)

IN this case although the plaintiff's suit was of a most complicated nature, yet the point to be disposed of in appeal may be briefly stated. The moonsiff gave a decree for the plaintiff for 7 kanees, 12 gundahs, 3 cowries, 1 krunt, 4½ dunts, part of talook Balee Kootub, in Chandgang village, as having been purchased by plaintiff from Noor Bibi, defendant. The appellant claims the land as having been purchased by him from Noor Bibi previously to the date of the plaintiff's alleged purchase. The point to be decided here is a simple question of fact, and I see no reason to interfere with the moonsiff's judgment upon it, which he has pronounced after a full and sufficient enquiry.

Noor Bibi, it would appear, first sold the land to plaintiff, and afterwards colluding with appellant gave appellant an antedated quabala for the land, which quabala the alleged writer of it denies having written, and which is otherwise not proved. I dismiss the appeal, and affirm the decree of the moonsiff.

THE 14TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 323.

Appeal from Moonsiff of Bhojapore.

Moorley Dhur, (Plaintiff,) Appellant,

versus

Haree Dhur, Respondent, (Defendant.)

THIS is a suit for rent upon a quobooleat for 4 kanees, 10 gundahs of land, at a jumma of 9 rupees, dated 7th Jeit 1199 M. S., in which there is this condition, that if on measurement more land should be found in possession of the cultivator, defendant, an increase of the jumma should be paid at the rate paid for the 4 kanees, 10 gundahs, and the claim is for the rent of 2 kanees, 5 gundahs, which plaintiff states proves to have been in possession of defendant.

Defendant denies the quobooleat, but admits having cultivated 6 kanees, 11 gundahs, without any written agreement, for which he paid a jumma of 9 rupees.

The moonsiff, on the ground that he is not satisfied with the evidence to prove the quobooleat, and that no notice was ever served upon defendant claiming an increase of jumma, and that there was evidence of enmity between the parties, dismissed the claim.

The claim, it is to be observed, is not to enhance the jumma of the land for the future, but is for back rent only, the defendant having given up the land at the time the suit was preferred; and it is very doubtful therefore whether the claim is admissible under the quobooleat. But setting this consideration aside, I agree with the moonsiff in distrusting the quobooleat. It seems to have been all written with the same hand, both the body of the quobooleat and the names of the witnesses and of defendant, and the writer of the document is not brought forward in evidence. Under all the circumstances I affirm the moonsiff's decree, and dismiss the appeal with costs.

THE 14TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 337.

Appeal from Mr. Finney, Moonsiff of 2d Town Division.

Mehur Alli, (Defendant,) Appellant,

versus

Buxoo Jemadar, (Plaintiff,) Respondent.

THIS is a suit for rupees 8-12, the price of a doolee which plaintiff states he bought for 1 rupee from appellant's mother, and afterwards repaired at an expence of rupees 7-12, and that Mehur Alli, defendant, appellant, hired it out for a day and never returned it.

The moonsiff on full and satisfactory proof decreed in favor of plaintiff; and the appellant having neglected to defend the case in the lower court, his appeal is now inadmissible. I therefore dismiss the appeal, and affirm the moonsiff's decree.

THE 15TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 709.

Appeal from Alli Noaz, Moonsiff of Bhutteary.

Ameer Khan, (Plaintiff,) Appellant,

versus

Loodce and others, (Defendants,) Respondents.

APPELLANT and his brother sued to obtain possession of 12 gundahs 1 cowrie of land, with mesne profits, as part of talook Kadi Reza, in turuff Sunker Baidnath. Respondent, Loodce,

claimed the land as his noabad land for which he has entered into engagements with Government, and as having been previously part of a talook belonging to him.

Appellant only adduced the evidence of two witnesses to support his claim, and did not agree to the deputation of an ameen to make a local enquiry; and the moonsiff, considering the evidence of the two witnesses, totally unsupported by documents of any kind, as insufficient to establish a claim of this nature, dismissed the suit.

I see no reason to interfere with this decree, which I therefore affirm, and dismiss the appeal.

THE 15TH DECEMBER 1846.

PRESENT : J. B. OGILVY, JUDGE.

No. 467.

Appeal from Mr. Wright, Moonsiff of Sundeeep.

Musst. Rotal Banoo, (Plaintiff,) Appellant,

versus

Mahomed Ahsun and others, (Defendants,) Respondents.

APPELLANT sued to recover rupees 15, the price of certain jewellery, stating that on her marriage to respondent, Ahsun, she received from him 17 rupees' worth of jewellery; that afterwards her husband put her away with all this jewellery on her person, and formally divorced her, but subsequently took an opportunity to seize her and convey to his house, where she was detained 24 days and stripped of this jewellery, of which afterwards 2 rupees' worth were returned to her.

Respondent, Mahomed Ahsun, denied having divorced plaintiff, and said that her father had persuaded her to leave him, and because he refused to get a divorce plaintiff has brought this false action.

The moonsiff, considering the evidence for the plaintiff most unsatisfactory and even contradictory of the plaint, dismissed the claim.

I see no reason to interfere with this judgment, and dismiss the appeal.

THE 16TH DECEMBER 1846.

PRESENT : J. B. OGILVY, JUDGE.

No. 492.

Appeal from Moolvee Abool Hossein, Moonsiff of Hathazaree.

Nussurolla, (Defendant,) Appellant,

versus

Nooruddeen and Ahmud Alli, (Plaintiffs,) Respondents.

PLAINTIFFS state that they cultivate 13 gundahs, 1 cowree of land in talook Nusurollah, turuff Jewan Khan, at a jumma of

rupee 1-13 annas, but that defendant took from them rupees 5-2-8 on account of 1205 M. S., of which rupees 4-2-8 were realized by distraint, and they sue to recover the amount taken in excess of rupee 1-13 annas, with damages.

Defendant states that in the talook in question the plaintiffs cultivate not 13 gundahs, 1 cowrie only, but 1 kanee, 6 gundahs, 2 cowries, for which they pay rent at a jumma of rupees 4-2-8, but that at the measurement of 1203 M. S., the plaintiffs in defendant's absence contrived to get the land in excess of the 13 gundahs 1 cowrie, measured as in their own possession instead of as belonging to the talook, calling it rent free charity land, and that they have entered into engagements direct with the zemindar for the rent of it.

The defendant produces two quobooleats upon which he founds his claim to the rent he realized, but the quobooleats are unaccompanied by any documentary proof of rent having ever been received in previous years upon them, and looking at the claim which, according to defendant's own shewing, the plaintiffs have advanced in regard to the lands, the defendant was not justified in resorting to the process of distraint.

Under these circumstances I see no reason to interfere with the moonsiff's decree in favor of plaintiff, and therefore dismiss the appeal.

THE 16TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 643.

Appeal from Moonshee Mahomed Danish, Moonsiff of Hutteah.

Ramjai Seel, (Defendant,) Appellant,

versus

Kuleemodeen, (Plaintiff,) Respondent.

THIS is a suit for possession of 1 gundah, 1 cowrie of land claimed by plaintiff as part of a howlah called Hafiz Mohamed Kaim in talook Kufulooddeen, in the village of Chur Afzul, from which he states the defendant forcibly dispossessed him.

Appellant claims the land as part of howlah Cumlakant Sein in the same talook.

Both parties have produced witnesses in support of their respective claims, but no documentary proof whatever, and the moonsiff has decreed in favor of the plaintiff apparently for no other reason than that the number of witnesses on his side rather predominates. I consider a local enquiry to be necessary to determine a boundary dispute of this sort, and I therefore remand the case to

the moonsiff, with orders to call on the parties for the chittas of measurement and any other documents they may possess, and to depute an ameen to make a local enquiry, and to compare the land with the chittas.

THE 17TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 312.

Appeal from Khyrollah Sha, Moonsiff of Zorowargunge,

Ramlochan Surma, (Defendant,) Appellant,

versus

Ramsoonder Surma, (Plaintiff,) Respondent.

THIS is a suit for possession of 1 courie of land, Shahee measurement, of which the plaintiff states he was dispossessed by defendant in 1199 M. S. Appellant claims the land as his ancestral possession. Three witnesses are adduced by plaintiffs and one by appellant, and all four depose in support of plaintiff's claim. The moonsiff accordingly decreed the land for the plaintiff.

From the depositions it appears that there are two wells or small tanks lying north and south of each other; that on the north belonging to plaintiff, that on the south to appellant; the road which divides the two being the common entrance to the houses of both. The appellant has now taken into his cultivation the bank of both tanks on either side of the common road, and from the depositions it is clear that the bank of the north side belongs to the plaintiff's tank. I see no reason therefore to admit the appeal, which is accordingly dismissed, both parties paying their own costs, as respondent appeared without being summoned.

THE 17TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 319.

Appeal from Moolvee Guda Hossein, Moonsiff of 1st Town Division.

Magun Dass, (Plaintiff,) Appellant,

versus

Kasheenath, (Defendant,) Respondent.

THIS suit was preferred on 10th Srabun, 1207 M. S., to recover rupees 15-10, the price of certain ornaments, which, the plaintiff states, the appellant hired from him in Maugh 1205, to return in five months, or on failure to do so to pay the price of them.

Defendant (appellant) denies having hired the ornaments, and says the suit is brought against him through enmity, from rivalry between him and plaintiff in their respective callings.

Three witnesses are called by plaintiff, and there is no documentary evidence. The proof therefore is very unsatisfactory, and I accordingly see no reason to interfere with the decree the moonsiff has given dismissing the claim. The appeal is therefore dismissed.

THE 17th DECEMBER 1846.

PRESENT: J. B. OGILVIE, JUDGE.

No. 882.

Appeal from Additional Moonsiff, Syud Ahmud.

Shahabdie Manjee, Appellant, (Defendant,)

versus

Sunaolla, Plaintiff, (Respondent.)

THIS is a suit for rupees 10-1, the price of certain bamboos and other articles furnished, alleged to be due according to a statement of accounts adjusted on the 5th Assin 1207 M. S., defendant, appellant, admitted the adjustment of the 5th Assin, but pleaded that he had subsequently paid the money to the son of the plaintiff.

Appellant neglected to defend his cause before the moonsiff; and the plaintiff having supported his claim by ample proof over and above the appellant's admission, the moonsiff decreed for the plaintiff.

Appellant having omitted to defend his cause before the moonsiff, his appeal is inadmissible, and it is therefore dismissed with costs.

THE 19TH DECEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 320.

Appeal from Poorno Chunder, Moonsiff of Howlah.

Musst. Ashruf Bebee, (Defendant,) Appellant,

versus

Mogul Chand and Alli Chand, (Plaintiffs,) Respondents.

IN this case the plaintiffs sue to recover the sum of rupees 9, realized from them on compulsion through the attachment of their property on an unjust claim for rent.

Appellant founded her claim to the rent upon a quobooleat.

The moonsiff held the evidence to the quobooleat to be most unsatisfactory. And as plaintiffs stated that they had paid the rent of the land in question to Samla Bebee and Sherfutulnissa, defen-

dants (the wife and daughter of the late Jewan Khulefa,) who also admitted to having received the rent from him, and as it appeared that the land was disputed between Samla Bebee and Sherfutulnissa on the one hand and appellant on the other (who is a daughter by another wife of Jewan,) the moonsiff decided that the attachment was improper, and decreed for plaintiffs.

It appears that the attachment of the plaintiffs' property was taken off on their compulsory payment of rent on account of two years 1205 and 1206 M. S., and it is also apparent that whatever right appellant may have to the land, she is in fact at present out of possession. The resort therefore on this occasion to the process of attachment was, in my opinion, an abuse of the law, and I therefore confirm the moonsiff's decree, and dismiss the appeal.

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THE 2ND DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 244 of 1846.

Appeal from the decision of the Moonsiff of Deeang.

Mahomed Mussood Moonshee and others, Appellants,
(Defendants,)

versus

Moonshea and others, Respondents, (Plaintiffs.)

IN this case the plaintiff sued to recover excess rent levied from him. Damages laid at 4 rupees 10 annas. As this case is precisely similar to the case No. 242 decided on the 25th November last, the same order is applicable.

THE 2ND DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 246 of 1846.

Appeal from the decision of the Moonsiff of Deeang.

Mahomed Mussood Moonshee and others, Appellants,
(Defendants,)

versus

Hyder Alli, Respondent, (Plaintiff,)

Golam Hossein and Dewan Alli, Respondents, (Defendants.)

IN this case the plaintiff sued to recover excess rent levied from him. Damages laid at 6 rupees 1 anna. This case is also similar to the one just decided, and No. 242 decided on the 25th November last. The same order therefore is applicable.

THE 3D DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 33 of 1845.

Appeal from the decision of the late Sudder Ameen.

Teeta Ram Dutt, son of Santee Ram Dutt, Appellant, (Plaintiff,)

versus

Turahee Ram Dutt and Nittanund Dutt, sons of Ramkishore Dutt,
and Goluk Chunder Dutt, son of Kishenmungul, Respondents,
(Defendants.)

IN this case the plaintiff (now appellant) sued to recover possession of 2 gundahs and 2 crunts of ground connected with the family dwelling house. It appeared from the plaintiff's statement that there were three brothers, namely, the plaintiff, Ramkishore Dutt, and Kishenmungul. In the year 1171 M. S. a deed of partition was drawn up, agreeably to which the property was divided into three shares, but the ground on the south side of the dwelling house remained entire. During the recent measurement the defendant Turahee Ram called himself the proprietor of the ground, and retained possession of the same, in consequence of which the plaintiff brought his present action. The defendant Nittanund Dutt sided with the plaintiff and alluded also to the deed of partition. The defendant Turahee Ram Dutt allowed that there had been a deed of partition in 1171 M. S., but declared that the ground in dispute had been in his special possession for a very long time. The sudder ameen objected to the deed as it had not been attested by any court, and upon the strength of Turahee Ram's possession for so many years dismissed the plaintiff's claim.

The appellant laid great stress upon the deed of partition filed with the papers, but Turahee Ram objected to it as not being a fair and genuine copy of the original document. The appeal was accepted by the judge on a former occasion; and on the 11th November last the appellant was allowed, in this court, an opportunity of producing the original deed. The parties appeared this day, but the appellant could not produce the original document called for. There is therefore good ground for suspecting the authenticity of the copy filed with the case. It is clear moreover from the papers and evidence filed by Turahee Ram Dutt, and from the evidence of Sree Ram, one of the plaintiff's witnesses, that Turahee Ram Dutt has been in possession of the disputed ground for many years. Under these circumstances the order of the lower court is confirmed, and the appeal dismissed with costs.

THE 3D DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 34 of 1845.

Appeal from the decision of the late Sudder Ameen.

Nitanund Dutt, son of Ramkishore Dutt, Appellant, (Defendant,) *versus*

Teetaram Dutt, Respondent, (Plaintiff,)

Traheeram Dutt and others, Respondents, (Defendants.)

THE appellant was dissatisfied with the decision of the sudder ameen, because in the case just decided he had not recorded the

appellant's share in the ground under dispute. The appeal was accepted on a former occasion by the judge; and on the 11th November last the case was deferred, in this court, for the purpose of inspecting a paper of agreement dated 27th Bysack 1238 B. S., in which the respective shares of Nitanund and Traheeram Dutt were recorded. The case was heard again this day in the presence of the parties. It appears from the paper alluded to that Nitanund has received his share, and as Traheeram's right in the ground in question was proved by the evidence recorded in case No. 33 just decided, I see no reason to disturb the decision of the sudder ameen, which is hereby confirmed, and the appeal dismissed with costs.

THE 3D DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 36 of 1845.

Appeal from the decision of the late Sudder Ameen.

Nittanund Dutt, son of Ram Kishore, Appellant, (Plaintiff,)

versus

Turahee Ram Dutt, son of Ram Kishore Dutt, and Teeta Ram Dutt, and Goluk Chunder Dutt, son of Kishen Mungul, Respondents, (Defendants.)

IN this case the appellant sued for possession of 1 gunda and 2 crunts of ground connected with the family dwelling house, which he stated was purchased by him from Kishen Mungul by virtue of a deed, dated the 4th Magh 1194.

The defendant, Turahee Ram, declared that the ground claimed by the plaintiff had been in his (defendant's) possession for nearly 30 years.

The sudder ameen dismissed the plaintiff's claim on the ground of Turahee Ram's uninterrupted possession for many years, and the absence of any proof regarding Kishen Mungul's previous possession. The appeal was accepted by the judge on a former occasion; and on the 11th November last the case was deferred, in this court, for the purpose of inspecting an agreement said to have been drawn up by Nittanund and Turahee Ram on the 18th Kartik 1199 M. S. The parties appeared this day, when the appellant declined producing the paper in question because he had been defeated in his claim in case No. 33, previously decided.

There is no proof that Kishen Mungul ever had possession of the ground in dispute, or that the deed referred particularly to it,

besides which Turahee Ram's possession has been abundantly proved, and the claim now set up forms a portion of the ground which in case No. 33 was proved to be altogether the property of Turahee Ram.

Under these circumstances the order of the lower court is confirmed, and the appeal dismissed with costs.

THE 4TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 248 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Abdool Muzeed, Appellant, (Defendant,)

versus

Caleeshunker Choudree, Respondent, (Plaintiff.)

THE plaintiff sued for possession of 13 gundahs of land situated in turuff Goolam Rahut Khan. Damages laid at 31 rupees, 7 annas, 4 gundahs.

It appeared from the plaintiff's statement that turuff Goolam Rahut Khan was sold for a balance of Government revenue, and purchased by one Huldhar Bunorjea on the 15th Bysack 1195 M. S., who subsequently sold the property to the plaintiff. The defendant replied that he had never paid rent either to the former proprietors or the auction purchaser, and that this land was included in turuff Ashuck Kumer Mujeed Rumzan.

It appeared from the report of an ameen who was deputed by the moonsiff, that the land in question was included in turuff Goolam Rahut Khan, and the defendant moreover could not support his own statement.

Under these circumstances I see no reason to disturb the decision of the moonsiff, which is hereby confirmed, and the appeal dismissed with costs.

THE 4TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 256 of 1846.

Appeal from the decision of the Moonsiff of Satkanea.

Radachurn, Appellant, (Defendant,)

versus

Rajbullub Thakoor, Respondent, (Plaintiff,)

Gopeechurn, Respondent, (Defendant.)

THE plaintiff sued for the payment of money lent upon a bond. Damages laid at 32 rupees, principal and interest.

The defendants in the case declared that they had duly borrowed ten rupees from the plaintiff's brother "Sreedhur," deceased; that sixteen rupees with interest in advance had been inserted in the bond in lieu of ten rupees, and they had moreover paid at different times the sum of twenty rupees Arcot, for which Sreedhur (deceased) gave them a receipt.

The bond was duly attested, and the receipt alluded to by the defendants was not forthcoming. Under these circumstances the order of the moonsiff, as regards the principal sum awarded against the defendants, was correct; but as the respondent has urged objections, and claimed the interest also, he is in my opinion entitled to it agreeably to Construction No. 868, dated the 14th February 1834. The decree therefore of the moonsiff is thus amended, and the appeal dismissed, with costs of both parties against appellant.

THE 8TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, *ADDITIONAL JUDGE.

No. 54 of 1846.

Appeal from the decision of the Moonsiff of Satkanea.

Ramsarun Sirdar, Appellant, (Plaintiff,)

versus

Aman Alli Choudree and Hyder Alli, Respondents, (Defendants.)

ACCORDING to the plaintiff's statement there was a wedding in the house of Aman Alli Choudree, one of the defendants in this case, and the plaintiff was engaged by him as a musician for the sum of thirteen rupees, which he claimed. Aman Alli Choudree denied the transaction, and yet acknowledged having given the plaintiff nine rupees. The moonsiff, being of opinion that there was a discrepancy in the evidence adduced by the plaintiff, dismissed his case. The plaintiff's engagement and employment however were proved; and if the assertion of Aman Alli Choudree had been correct, there was no necessity for remunerating the plaintiff at all. Under these circumstances the appeal was accepted on the 28th August last, and notice issued to the respondents. As no reply has been given, the appeal is decreed as regards Aman Alli Choudree, and the order of the lower court reversed, and respondent will pay the costs of both courts.

THE 8TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 65 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Sanchee, Appellant, (Defendant,)

versus

Bakur Alli, Respondent, (Plaintiff,)

and

Gokul Chunder and Obhoychurn, Respondents, (Defendants.)

IN this case the plaintiff sued for possession of 1 canee, 2 gun-dahs, and 2 couries of lakheraje land, which were sold to him, by Obhoychurn and Gokul Chunder, the sons of Data Ram, deceased, for the sum of 20 rupees, by virtue of a deed, dated the 6th Kartik 1204 M. S. Obhoychurn and Gokul Chunder acknowledged the sale, and added that the land had been pledged to the defendant, Sanchee, who denied the right of the plaintiff to land which was in his own possession. The moonsiff decided upon the strength of the deed, which was duly attested, but it was clear that the land had been previously pledged to Sanchee, defendant, and it was proved also that 8 rupees only had been paid to Obhoychurn, and the balance 12 rupees were to be paid to Sanchee, who had a prior lien upon the land.

The appeal was therefore accepted on the 1st September last for the purpose of ascertaining whether the money alluded to had been paid to Sanchee, appellant. A compromise has since been filed by the parties, namely, Sanchee, appellant, and Baker Alli, respondent, to this effect, that the appellant would give up half of the land in his possession to the respondent, and one rupee rent for the current year, and retain the other half of the land in his own possession. Upon these terms therefore the appeal is decreed, and the order of the lower court reversed.

THE 8TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 72 of 1845.

Appeal from the decision of the late Sudder Ameen.

Nitanund Dutt, Appellant, (Plaintiff,)

versus

Turahee Ram Dutt, Respondent, (Defendant.)

IN this case the plaintiff claimed 2 doons, 13 canees, 6 gun-dahs, 3 cowrees, 2 krants, 4 dunts of land, with its usufruct, and cash, with interest, amounting in all to 989 rupees, 8 annas, 10 pies.

It appeared that the defendant was the brother of the plaintiff. On the 27th Bysack 1238 B. S., an agreement was drawn up, agreeably to which the property, which had devolved upon them from their father, was to be divided by mutual arrangement, which included also the share of ready money, and the sum which was due from one Joorawar Sing amounting to 2000 (two thousand rupees.) According to the plaintiff's statement it further appeared that he had sent to the defendant a bank note for 140 rupees, for the purpose of prosecuting their case in court relative to the debt above mentioned, and as he (plaintiff) could not obtain possession of his share of the property, nor payment of the money, he was compelled to sue the defendant in court. The defendant, Tarahee Ram, acknowledged that the paper of agreement, dated the 27th Bysack 1238 B. S., had been prepared, according to which each party was in possession of their respective shares, but denied the allegations regarding the money alluded to by the plaintiff. He further acknowledged having collected rents from the plaintiff's share in the mofussil during his absence, as it was indispensably necessary to pay the Government revenue, for, although there had been a private division amongst themselves of their respective shares, no regular partition had been effected or sanctioned under Regulation XIX. 1814; consequently the whole property was responsible for the Government demand.

The sudder ameen decreed in favor of the plaintiff upon the strength of the agreement drawn up on the 27th Bysack 1238 B. S., and passed no order upon the other points set forth by the plaintiff as no proof had been established.

The sudder ameen further directed that the defendant should in the course of twelve months prepare a separate dwelling house for himself according to the terms of the agreement, and the expences were to be defrayed by the plaintiff. The appellant is dissatisfied with the sudder ameen for not having awarded to him the profits of the land decreed to him, nor his share of the money which was due from Joorawar Sing. As the appellant was not in my opinion dispossessed of his share of the property, there was no ground for awarding him the profits thereof, and on the other points sufficient evidence was not adduced. Under these circumstances I see no reason to disturb the decision of the late sudder ameen, which is hereby confirmed, and the appeal dismissed with costs.

THE 8TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 74 of 1845.

Appeal from the decision of the late Sudder Ameen.

Turahee Ram, Appellant, (Defendant),

versus

Nitanund Dutt, Respondent, (Plaintiff.)

THIS case is connected with the case No. 72 previously decided. The appellant is dissatisfied with the decision of the sudder ameen; 1st, because he did not saddle the respondent with costs for the part of his claim which was rejected; 2d, because the sudder ameen had by the wording of his decree awarded to the plaintiff more than what was recorded in the paper of agreement; 3d, the appellant wishes for an extension of the period allowed by the sudder ameen for the erection of a separate dwelling for himself. I see no reason to disturb the decision of the sudder ameen upon the first point; 2d, as the plaintiff in case No. 72 cannot of course receive more than what is recorded in the paper of agreement, the decree is amended on that point, and the plaintiff will obtain possession according to his share described in the paper referred to; 3d, at the suggestion of both parties, the period of two years is allowed for the erection of the dwelling house for the defendant, Turahee Ram, and the sudder ameen's decree is thus amended. The appeal therefore is dismissed as regards the first point, and the sudder ameen's order amended as above directed.

THE 8TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 129 of 1846.

Appeal from the decision of the Moonsiff of Noaparrah.

Hushmut Alli, Appellant, (Plaintiff),

versus

Nusuroollah, Respondent, (Defendant.)

THE appellant stated that he had engaged the respondent as a servant for three months, and advanced him 3 rupees, 8 annas, and it was arranged that if the respondent absented himself the money was to be refunded. The respondent however remained for one month and a half and then absconded. The respondent declared that he was engaged by the appellant on a salary of 14 rupees per annum, that he remained three months,

but in consequence of his receiving no wages, he left the appellant's service. The moonsiff dismissed the appellant's case, because he considered the evidence of his witnesses contradictory.

The discrepancy was slight and immaterial, and the appellant had proved the payment of the money upon the condition stated. Under these circumstances the appeal was accepted on the 26th August last, and notice issued to the respondent. As he has given no reply, nor filed any evidence in his defence, the appeal is decreed, and the order of the lower court reversed, and the respondent will pay the costs of both courts.

THE 9TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 58 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Musst. Mitrobinda, wife of Ramdoolall, deceased, and Musst. Sooburna Bhadra, wife of Suda Ram Deo; deceased, Appellants, (Plaintiffs,)

versus

Bun Malee Sircar and Cōylas Chunder Sein, Chundee Churn, auction purchaser,, and the Collector of Chittagoṅg, Respondents, (Defendants.)

THE plaintiffs sued to reverse the measurement paper, and settlement and sale of 1 canee and 8 gundahs of land, situated in turuff Gopal Dya Ram. Damages laid at 15 rupees, 13 annas, 5 pic.

The plaintiffs declared that the land in question was included in turuff Gopal Dya Ram at the measurement of 1126 M. S., but at the recent measurement it had been recorded as noabad, and a settlement of it concluded with Bun Malee Sircar on the part of Government. In consequence of arrears of revenue it was subsequently sold and purchased by Chundee Churn. It was quite clear that the land in question was measured as described by the appellants at the recent measurement, but he could not prove that it was included in turuff Gopal Dya Ram at the measurement of 1126 M. S.

The appeal therefore is dismissed, and the order of the lower court confirmed.

THE 9TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 71 of 1846.

Appeal from the decision of the Moonsiff of Noaparah.

Fukeer Chand Battacharje, Appellant, (Plaintiff),

versus

Rampershaud Thakoor and others, and the Collector of Chittagong, Respondents, (Defendants.)

THE plaintiff sued to cancel the measurement paper of 6 cowries of land. Damages laid at 3 rupees, 4 annas. From the plaintiff's statement it appeared that the land in question belonged to his ancestral property, and at the measurement of 1126 M. S. was recorded as birmootter, but at the recent measurement Rampershaud Thakoor colluded with the measuring ameen, and caused these 6 cowries of land to be measured as dewutter in the name of Sristeedhur. The defendants denied the plaintiff's allegation, and as the plaintiff could not support it, the moonsiff dismissed his case. As I see no reason to interfere with this decision, the appeal is dismissed, and the order of the lower court confirmed.

THE 9TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 76 of 1846.

Appeal from the decision of the Moonsiff of Noaparah.

Rampershad Thakoor, Appellant, (Defendant,)

versus

Fukeerchand Farengie, Respondent, (Plaintiff.)

THIS case is similar to the case No. 71 previously decided. In this case Fukeerchand Farengie was plaintiff, and, calling himself the cultivator on the part of his master, Fukeerchand Buttacharje, complained against the defendant for cutting his crops. The appeal was accepted on the 2d September, and notice issued to the respondent. As it was proved in the case previously decided that the land in dispute did not belong to Fukeerchand Buttacharje, the appeal is decreed, and the order of the lower court reversed.

THE 10TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 73 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Bocha Gazee, brother of Shamut Alli, deceased, Appellant,
(Plaintiff,)

versus

Kumer Alli and Mahomud Tunnoo, Respondents, (Defendants.)

THE plaintiff sued to cancel an engagement taken from him by the defendants for 9 canees of land, the rent of which they claimed as belonging to their estate talook Rogoonundun, but which the plaintiff asserted belonged to the Setulchurree hill, which he had cleared and cultivated. The defendants declared that the land in question was included in their estate at the measurement of 1126, 1150, and 1162 M. S.

The moonsiff without calling for these proofs decided merely upon the strength of the written engagement, and dismissed the plaintiff's claim. The appeal was accepted on the 1st September last, and notice issued to the respondents. As no proof has been adduced that the land in question is connected with talook Rugoonundun, the appeal is decreed, and the order of the lower court reversed, and respondent will pay the costs. The moonsiff will explain the omission to call in the first instance for the proof referred to by the defendants in support of their statement.

THE 10TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 83 of 1846.

Appeal from the decision of the Moonsiff of Satkaneah.

Gour Mohun, Appellant, (Defendant,)

versus

Bulram, Respondent, (Plaintiff.)

THE plaintiff sued to recover 75 arees of mustard seed, valued at 32 rupees. According to the plaintiff's statement it appeared that the defendant had received from him 16 rupees, and engaged upon a bond to deliver 75 arees of mustard seed, which he had neglected to perform. The moonsiff decided merely upon the evidence of the witnesses without calling for the bond alluded to. The appeal therefore was accepted on the 4th September last, and notice issued to the respondent for the production of the bond, with which order he is unable to comply. The appeal is decreed, and the order of the lower court reversed, and respondent will pay costs.

THE 10TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 89 of 1846.

Appeal from the Moonsiff of Puttea.

Banoo Talookdar, Mahomed Zumma, Chokeydar, and Dunwa,
Appellants, (Plaintiffs,)

versus

Pardeshee, and Kumur Alli, son of Kamdar, Respondents,
(Defendants.)

THIS case is similar to the one No. 73 previously decided, and the same order is applicable. The appeal was accepted on the 2d of September, and notice issued to the respondents, who have not produced any proof in support of their right to claim rent from the land in the possession of the appellant. The appeal therefore is decreed, and the order of the lower court reversed, and the respondent will pay the costs.

THE 10TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 91 of 1846.

Appeal from the decision of the Moonsiff of Issapore.

Wallee Mahomud, son of Bussur Mahomud, Appellant,
(Defendant,)

versus

Jan Alli, Respondent, (Plaintiff.)

THE plaintiff in this case sued to reverse the order of the deputy magistrate regarding 2 canees of land in the possession of the defendant. Damages laid at 31 rupees 6 as. The defendant resisted the application upon the grounds of these two canees being nankar land, and forming part of 5 canees granted many years ago to the ancestors of Punditta from whom he purchased the land for a consideration. The moonsiff decided upon the strength of the recent measurement papers, and decreed in favor of the plaintiff. It was clear however from an inspection of the pottah, dated the 1st Bhadoon 1116 M. S., corresponding with the year 1752, that 5 cannees of land had been granted by the former zemindar as nankar, which land subsequently came into the possession of the appellant, of which the 2 canees in question formed a portion. Under these circumstances the appeal was accepted on the 10th September last, and notice issued to the respondent. The case was again heard this day, and as no fresh documents have been produced to induce me to alter my opinion, the appeal is decreed, and the order of the lower court reversed, and respondent paying costs.

THE 10TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 98 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Ramnarain, son of Chundeenarain, Appellant, (Plaintiff,)

versus

Musst. Sohagee, Respondent, (Defendant.)

THE plaintiff sued to recover the sum of 60 rupees 10 annas, his portion of the usufruct of his property for the period of five years. According to the plaintiff's statement it appeared that his brother Ramdass (deceased,) the husband of the defendant, Sohagee, managed their ancestral property in mouza Jafferabad, in consideration of which the plaintiff allowed him 1 rupee 8 annas as commission. After the payment of the Government revenue, their assets were equally divided amongst them, and the plaintiff's share amounted to 12 rupees 2 annas. From the year 1199 M. S., to the year 1203 M. S., he did not receive any rent from his brother, who died in 1204 M. S. He was therefore obliged to collect the rents himself, and hoped to have deducted from the assets to the amount due to him, but the defendant, Sohagee, in collusion with one Rammunee Thakoor, attached the property of the ryots, and he was unable to reimburse himself. The defendant Sohagee denied the plaintiff's statement, and charged him with embezzling the rents of the estate. The moonsiff discredited the evidence on the part of the plaintiff and dismissed his case. On the 5th September the appeal was accepted, and notice issued to the respondent for the purpose of ascertaining whether she had any receipts of the plaintiff for the payment of rent during the period her husband managed the property. The case was heard again this day, and no document of the nature called for has been produced. As the statement of the plaintiff was in my opinion fully established, the appeal is decreed and the order of the lower court reversed.

THE 10TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 103 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Rammessur, Appellant, (Plaintiff,)

versus

Rumzan Alli, Harroo Jemadar, Chand Gazee, and Musst. Arman Bebee, Respondents, (Defendants.)

IN this case the plaintiff sued to recover rent illegally levied from him. He stated that he had 2 canees of land in cultivation in mouza Kharana, talook Rajbullub, the rent of which he paid to one

Chand Gazee. He subsequently had 1 droon 1 canee of land in his possession and paid the rent to Haroo Jemadar, but the defendant, Rumzan Alli, with whom he had no connection, also realized rent from him for 2 canees of this land. Rumzan Alli asserted that the land belonged to his talook Arman Bebee which he had purchased at the Government sale, for which the plaintiff had engaged to pay him rent for the year 1205 M. S. The moonsiff decided merely upon the strength of the written engagement produced by the defendant. From a perusal of the papers however it was evident that the land claimed by Rumzan Alli did not belong to the property purchased by him, and therefore the engagement was of no avail.

The appeal was accepted on the 11th September last, and notice issued to the respondent. The case was heard again this day, and as I see no reason for altering my opinion, the appeal is decreed, and the order of the lower court reversed.

THE 10TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.
No. 106 of 1846.

Appeal from the Moonsiff of Puttea.

Haroo Jemadar, Appellant, (Defendant,)
versus

Rammessur, Respondent, (Plaintiff,) and Rumzan Alli,
Respondent, (Defendant.)

THIS case is similar to the case No. 103 previously decided, which was connected with the rent for the year 1205 M. S. In the present instance the plaintiff sued to recover rent illegally levied from him for 6 canees of land for the year 1206 M. S. As it was proved in case No. 103, that the land for which rent was claimed by Ramzan Alli did not belong to him, the appeal is decreed, and the order of the lower court reversed, and the respondent Ramzan Alli will pay the costs, and refund the amount which he had collected from the plaintiff, Rammessur.

THE 11TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.
No. 63 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Needhee Ram Shickdar, son of Mokhtaram, deceased, Appellant,
(Defendant,)

versus

Dabee Churn and Gowree Churn, Respondents, (Plaintiffs.)

THE plaintiffs instituted a suit to cancel the summary award of the deputy collector regarding 1 canee, 12 gundahs and 2 cowries of land.

It appeared that on the 11th Chyte 1188 M. S., the defendant's father and the defendant gave up to the plaintiff's father by a deed of acquittance 1 canee, 17 gundahs and 2 cowries of land in mouza Busharutnugger. Notwithstanding this arrangement, the defendant instituted a summary suit against the plaintiffs for rent for the year 1204 M. S., and obtained a decree. The defendant admitted that the land had been given up as stated by the plaintiffs, but it was subsequently restored, and an engagement executed by the plaintiffs for the payment of rent. The plaintiff's statement was substantiated by the deed of acquittance filed with the papers, and the defendant could not support his allegation. Under these circumstances I see no reason to interfere with the decision of the moonsiff, which is hereby confirmed, and the appeal dismissed with costs.

THE 11TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 112 of 1846.

Appeal from the decision of the Moonsiff of Satkanea.

Baker Alli, Appellant, (Plaintiff)

versus

Rammanick, Bustumchurn, and Musst. Gilonee, Respondents,
(Defendants.)

THE plaintiff sued to recover 280 arees of mustard seed, valued at 150 rupees. According to the plaintiff's statement the defendants received from him 70 rupees, and gave a bond on stamp paper, dated the 10th Assar 1202 M. S., promising to deliver to the plaintiff in Phagoon of that year 280 arees of mustard seed, which engagement they had neglected to perform.

The defendants denied the transaction. Bustumchurn declared that on the 1st Jyte 1202 M. S., he went to Akyab, and remained there till Phagoon of that year; Rammanick asserted that on the 14th Assar 1202 he was at a place called Banegram; and each party brought forward evidence to defeat the validity of the bond. The moonsiff considered that there was discrepancy in the evidence adduced by the plaintiff, and he suspected the bond, because it had been pasted together. The bond however was duly attested, and there was no reason for suspecting it, as it had been pasted in consequence of being torn. In fact there was greater reason for suspecting the evidence brought forward by the defendants.

Under these circumstances the appeal was accepted on the 14th September last, and notice issued to the respondents.

The case was heard again this day, and as I see no reason to alter my former opinion, the appeal is decreed, and the order of the lower court reversed, and respondent will pay the costs.

THE 11TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 117 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Cowree Sing, son of Rubhee Dass, Appellant, (Plaintiff,)

versus

Rutten Sing and Musst. Boodea, Respondents, (Defendants.)

THE plaintiff sued to recover possession of 4 canees of land, or the rent. Damages laid at 62 rupees.

It appeared that on the 29th Phagoon 1205 M. S., the plaintiff had purchased from Musst. Boodea, for 100 rupees, 8 canees of land in mouza Chayachur, of which 4 canees were in the cultivation of the defendant Rutten Sing, who would neither pay his rent, nor give up the land. The defendant, Rutten Sing, declared, that the plaintiff wanted to exact 3 rupees, for each canee, whereas one rupee per canee was the proper rent.

The appeal was accepted on the 14th September last, and notice issued to the respondent for the purpose of ascertaining what was the proper rent for each canee. As it appears from a proceeding of the deputy collector, and the evidence taken in this court, that Musst. Boodea, the former owner of the land, received only one rupee for each canee as rent, the appeal is dismissed, and the order of the lower court confirmed.

THE 11TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 128 of 1846.

Appeal from the decision of the Moonsiff of Satkanea.

Mahomed Budul, Appellant, (Defendant,)

versus

Musst. Meeronissa alias Munnee Bebee, wife of Mosun Hajee, deceased, Respondent, (Plaintiff.)

THE plaintiff sued to recover the value of three cows, which were attached, together with those of Hafiz and Ashmut, and illegally sold. Damages laid at 55 rupees, 3 annas, 6 pie.

The defendant denied having attached or sold any cows belonging to the plaintiff. Mahomed Shuffee Hafiz and Ashmut Ali, who lived in the plaintiff's house, were defaulters to the amount of fifteen rupees as rent for the year 1205 M. S., their cows therefore were attached and sold, and no objections were urged at the time by the plaintiff or any one else. The moonsiff was of opinion that the cattle of the defaulters had been released from attachment, and

those of the plaintiff sold for the balance of the rent, and therefore decreed in the plaintiff's favour. There was reason however to believe that the defaulters had colluded with the plaintiff, and instigated this suit. The appeal therefore was accepted on the 26th October last, and notice issued to the respondent, As no reply has been filed in the matter, the appeal is decreed, and the order of the lower court reversed, and respondent will pay the costs.

THE 14TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 150 of 1846.

Appeal from the decision of the Moonsiff of Issapore.

Jyegopal and Musummat Sundee, Appellants, (Defendants,)

versus

Musummat Sooa Beebee, Respondent, (Plaintiff.)

THE plaintiff sued to recover 200 rupees, lent to the defendants for two months, without a bond, on the 2d Assar 1201 M. S. The defendants denied the charge, but the plaintiff's witnesses corroborated her story, on the strength of which the moonsiff decreed in her favor. There was however no document in support of the plaintiff's statement, besides which her silence for six years rendered the transaction extremely improbable.

The appeal therefore was accepted on the 31st October last, and notice issued to the respondent.

The case was heard again this day, and as no fresh proof has been brought forward to induce me to alter my opinion, the appeal is decreed, and the order of the lower court reversed, and the respondent will pay the costs.

THE 14TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 160 of 1846.

Appeal from the decision of the Moonsiff of Deeang.

Musummat Noabee, mother of Hydunnea, and Baker Alli,
Appellants, (Defendants,)

versus

Musummat Billooa, (Respondent,) Plaintiff.

THE plaintiff sued to gain possession of 3 gundahs, 3 courees of land. Damages laid at 21 rupees, 6 annas. According to her statement, it appeared that her husband, Loodée, (deceased,) on the 1st Bysak 1190 purchased, by virtue of a deed from Mahomed Shuffee,

the son of Sumeer Mahomed, 3 gundahs and 3 couries of land, situated in mouzah Puchun Chal. In the year 1198 M. S. Hy-dunnea, son of Hossein, dispossessed her husband, who died in 1201 M. S. The defendant, Hydunnea, alias Hyder Alli, denied the plaintiff's statement, and declared that his father had mortgaged 1 canee of land to the plaintiff's husband. At his father's death, in consequence of his youth, the plaintiff continued to maintain possession, but when he attained his majority he took possession for himself. The deed alluded to by the plaintiff was said to have been stolen, but the moonsiff decreed in her favor because the defendant could not produce the agreement relative to the mortgage in the lifetime of his father. It was however incumbent upon the plaintiff to prove her case, and produce the document upon which she claimed the land in question. The appeal was accepted on the 12th November last, and notice issued to the respondent. The case was heard this day, and as I see no reason to alter my opinion, the appeal is decreed, and the order of the lower court reversed, and respondent will pay the costs.

THE 14TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 161 of 1846.

Appeal from the decision of the Moonsiff of Deeang.

Sada Ram Dutt, Appellant, (Defendant,)

versus

Munnoo Ruma, Respondent, (Plaintiff.)

It appears that the plaintiff sued the defendant for possession of 1 canee and 5 gundahs of land, and was cast in the moonsiff's court. This order was confirmed in appeal on the 30th October last in case No. 144, and the appellant now complains that the moonsiff did not allow him costs in that case. As he is however clearly entitled to costs, the appeal is decreed, and the moonsiff's order amended on that point, and he will explain why he did not in the first instance allow the appellant costs in the case.

THE 14TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 218 of 1846.

Appeal from the decision of the Moonsiff of Deeang.

Mohussun Koolal, Petunnea, and Lobonea, Appellants,
(Defendants,)

versus

Sunaolla Koolal, Respondent, (Plaintiff.)

THE plaintiff sued the defendants for ejecting him from their society, and obtained damages.

It was proved, however, by the defendants, that the plaintiff had acted improperly, and contrary to his caste, and therefore his neighbours had unanimously expelled him from their society.

The appeal was accepted on the 5th November last, and notice issued to the respondent. As I see no reason to alter my opinion, the appeal is decreed, and the order of the lower court reversed, and respondent will pay the costs.

THE 14TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 230 of 1846.

Appeal from the decision of the Moonsiff of Issapore.

Moolvee Budeeoddeen Ahmed, Appellant, (Defendant,)

versus ,

Kumer Ali, Sadoo, Hyder Ali, and Matadeen Thakoor, and Achbur Sing, Respondents, (Plaintiffs.)

THE plaintiffs sued to cancel a chelan, and recover rent illegally levied from them. Damages laid at 13 rupees.

They stated that they had in possession 3 canees, 5 gundahs and 3 cowries of land in mouza Muchbunder, talook Kumer Ali, turuff Gunesham Kalloo, the property of Matadeen and Achbur Sing, to whom they had always paid rent. They had no connection with the defendant, who had nevertheless taken a chelan from them and collected rent for 1 canee, 1 gunda and 3 cowries of land as noabad. The defendant replied that 1 canee 7 cowries of land * in turuff Gunesham Kaloo were measured as noabad at the recent measurement, and Mudhoo and Mahomud Ali, son and brother of Kumer Alli, concluded a settlement for it with Government at a rent of 1 rupee, 4 annas, 4 pie, on the 4th January 1841, corresponding with 22 Poos 1202 M. S. This land was subsequently sold for arrears of revenue, and purchased by him, (defendant,) and finding the plaintiffs in possession he called upon them for rent. The moonsiff decreed in favor of the plaintiffs. It was clear however from the papers that the land was settled as described by the defendant, and subsequently purchased by him. It was clear also from the ameen's report that the plaintiffs were in possession of this land, and were responsible for the rent. The appeal was accepted on the 5th November last, and notice issued to the respondents, who have filed no reply in the matter. The appeal therefore is decreed, and the order of the lower court reversed, and respondents will pay the costs.

THE 15TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 82 of 1846.

Appeal from the decision of the Moonsiff of Satkanea.

Rammohun Sirdar, Appellant, (Defendant,)

versus

Mahomud Kanoo Sikdar and Sumeer Mahomud, Respondents,
(Plaintiffs.)

THE plaintiff sued to recover the sum of 37 rupees, 12 annas, improperly levied from him. It appeared that there was a balance of rent due from defendant, Sumeer Mahomud, for the year 1202 M. S., in consequence of which his cattle were attached by the appellant. The plaintiff then became security for Sumeer Mahomud, and engaged to pay the balance of rent, which was accordingly realized through him. The moonsiff released Sumeer Mahomud from all responsibility, and decreed against Rammohun Sirdar. It appeared that Sumeer Mahomud had sued the appellant for exacting excess rent, and obtained a decree on that point. The appeal was accepted on the 4th September last for the purpose of seeing the decree in that matter.

It is evident from the papers that Kanoo Sikdar voluntarily became security for Sumeer Mahomud in the first instance, who is therefor responsible for the money which was realized from Kanoo Sikdar. Whatever claim therefore Kanoo Sikdar has, should be against Sumeer Mahomud, and not against the appellant. The appeal therefore is decreed, and the order of the moonsiff amended in this point, and Sumeer Mahomud will pay to Kanoo Sikdar the amount claimed, as well as the costs in both courts.

THE 15TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 104 of 1846.

Appeal from the decision of the Moonsiff of Rungunea.

Ramnarain and Anund Mohun, Appellants, (Defendants,)

versus

Bux Alli, Noor Bux, Mahomed Ameer and others, Respondents,
(Plaintiffs.)

THE plaintiffs sued to cancel a kistbundee, and recover rent improperly levied from them. Damages laid at 63 rupees, 4 annas. According to their statement it appeared that 2 doons, 10 canees of land in talook Fukeer Chand, turuff Muneecoochub, were in their

possession as etmamdars at a rent of 36 rupees Arcot, which they paid up to 1195 M. S. From 1196 to 1203 M. S., in consequence of an inundation, 14 canees of land were cut away, and the remainder covered with sand. Notwithstanding this fact, the talookdars still demanded rent for the years alluded to. They wished to resign their land, but the resignation was not accepted. In 1203 M. S. their property was attached for the rent, 8 rupees cash realized, and a kistbundee taken for the remainder. The defendants denied the statement of the plaintiff, and remarked that if the land had been, as stated, cut away and deteriorated in 1196 M. S., how did Mahomud Reza, the father of Noorbux, and Mahomud Ameer, defendant, depose in the year 1199, that 2 doons and 11 canees of land were in the possession of plaintiff and party, and made no sort of allusion to the land being cut away.

From the report of the ameen, who was deputed to the spot by the moonsiff, the statement of the plaintiff was not in my opinion established. The appeal therefore was accepted on the 11th September last, and notice issued to the respondents. The case was heard again this day, and no further proof has been adduced by the respondents.

It is clear from the deposition of Mahomud Reza in 1199, before the deputy collector, which has been filed by the appellant, that there was no deterioration of land at that time, nor was any complaint urged regarding the land being cut away. The appeal therefore is decreed, and the order of the lower court reversed, and respondents will pay the costs.

THE 15TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 149 of 1846.

Appeal from the Moonsiff of Rungunea.

Magun Dass, Appellant, (Defendant,)

versus

Bocharam *alias* Bocha Joogee, Respondent, (Plaintiff.)

THE plaintiff sued to cancel an engagement which had been taken from him for the payment of rent. Damages laid at 15 rupees.

From the plaintiff's statement it appeared that, on the 25th Jyte 1198 M. S., he took two canees of land from Rajbullub Mahajun, in mouza Gujullea, pergunnah Rajnuggur, at a rent of six rupees per annum, which he paid him up to 1204 M. S., and after his death to his wife Oorna Poorna, and Musst. Koosoollea, wife of Ramlochun Mahajun. Notwithstanding this, Magun Dass, defendant, called him to his house and forcibly took from him an engagement for the payment of six rupees rent. The defendant

denied the plaintiff's statement, and the appeal was accepted on the 23d October last, for the purpose of ascertaining what authority the appellant had to take the engagement in question. The case was heard this day, and as no authority has been produced, except a decree of the moonsiff, dated 28th February 1845, which relates to another case, the order of the lower court is confirmed, and the appeal dismissed with costs.

THE 16TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 168 of 1846.

Appeal from the decision of the Moonsiff of Deeang.

Kashenat, son of Gowreekant Surma, Appellant, (Defendant,)

versus

Dybokkee Nundun Chukurbuttee, Respondent, (Plaintiff.)

THE plaintiff complained against the defendant for blocking up a road which led to the plaintiff's premises. The defendant denied the charge, but the moonsiff, being of opinion that the road was the joint property of the plaintiff and others, decreed in his favor. As the report of the ameen was not in my opinion satisfactory, the appeal was accepted on the 16th November last, and another ameen deputed at the instance of both parties for the purpose of ascertaining whether the road had been blocked up recently, or some years ago, and whether any inconvenience was occasioned to the plaintiff in consequence. The case was heard again this day, and from the evidence of one witness before the ameen it seems that the road has been narrowed for about thirty years, and from the report of the ameen himself no inconvenience appears, to have been occasioned to the plaintiff, nor the access to his premises obstructed. Under these circumstances the appeal is decreed, and the order of the lower court reversed, and respondent will pay the costs.

THE 16TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 184 of 1846.

Appeal from the decision of the Moonsiff of Issapore.

Mahomed Kamil and Musst. Aysha Bebee, Appellants, (Defendants,)

versus

Achbur Sing, Respondent, (Plaintiff.)

THE plaintiff sued to recover rent from the defendants. Damages laid at forty-two rupees.

It appeared that the plaintiff had a 4-annas share in 3 doons, 8 canes and 10 gundahs of land, in mouza Lellong, talook Panchoo Kudul, turuff Gunesham Kaloo, and the defendants were in balance to the amount of thirty rupees, besides interest, from the year 1196 to the year 1202 M. S. The defendants denied the balance, and produced receipts in support of their statement. The moonsiff gave no credence to these documents, and decreed in favor of the plaintiff. The appeal was accepted on the 18th November last, and notice issued to the respondent. The case was heard this day, when the respondent positively denied the receipt, written upon the back of the dakhilas filed by the defendants. On a closer examination it is clear that the ink on the back is much fresher than that in the body of the dakhilas, and there is certainly reason for suspecting their authenticity. Under these circumstances the order of the lower court is confirmed, and the appeal dismissed with costs.

THE 16TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 219 of 1846.

Appeal from the decision of the Moonsiff of Deeang.

Ramjye Dutt, son of Teetaram Dutt, deceased, Appellant,
(Defendant,)

versus

Ram Dass, son of Tupossea Ram Dass, Respondent, (Plaintiff.)

THE plaintiff sued to recover from the defendant 31 rupees, 9 annas, principal and interest. It appeared that on the 7th Aghun 1197 M. S. the defendant borrowed from the plaintiff 14 rupees Sicca, and 2 rupees Arcot, which with interest subsequently amounted to 33 rupees, 1 anna. In Kartik 1205 the plaintiff received 1 rupee 8 annas interest, which left 31 rupees 9 annas due to him.

The defendant acknowledged having borrowed 12 rupees Arcot with interest in 1196, which was deducted from 37 rupees, 8 annas, due to him for the hire of a boat. The plaintiff filed a paper attested by witnesses in which 14 rupees Sicca, and 2 rupees Arcot were stated to have been borrowed by the defendant, on which grounds the moonsiff decreed in his favor. The appeal was accepted on the 19th November last, for the purpose of giving the appellant an opportunity of proving his statement regarding the deduction made for the hire of a boat. The case was heard this day, and as no such proof has been adduced by the appellant, the order of the lower court is confirmed, and the appeal dismissed with costs.

THE 19TH DECEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 71 of 1846.

Appeal from the decision of the Moonsiff of Deeng.

Musst. Mooteornessa, (Defendant,) Appellant,

versus

Sheik Jynooddeen Subadar, (Plaintiff,) Respondent.

THE plaintiff sued to gain possession of 3 doons, 6 canees and 18 gundahs of land. Damages laid at 106 rupees, 13 annas.

It appeared from the plaintiff's statement that, on the 3d Aghun 1207 M. S., he bought by virtue of a deed from Ahmed Alli, the husband of the appellant, 3 doons, 6 canees and 18 gundahs of land lakheraje, in Chur Fureed, for 495 rupees, but could not gain possession. The appellant denied the plaintiff's statement, and attempted to prove that her husband, Ahmud Alli, had previously transferred this land to her by a deed of gift, dated the 20th Kartik 1207. Besides the deed of transfer, which was duly attested, the plaintiff filed the title deeds connected with this land which he had received from the husband of the appellant. From a copy of a petition filed with the papers, it was apparent that when the plaintiff wished to have his name registered in the collector's office for the land which he had purchased, the husband of the appellant, on the 29th January 1846, acknowledged having sold the land in question to the plaintiff, and assented to the transfer of names.

The appellant filed the deed of gift by virtue of which she claimed the land, but four witnesses to this document declared that it had been drawn up in March 1846, subsequent to the purchase made by the plaintiff, from which it was evident that the deed of gift filed by the appellant had been antedated. Upon these grounds the moonsiff decreed in plaintiff's favour.

The appellant was dissatisfied with that decision, but as I quite concur in it, the order of the lower court is confirmed, and the appeal dismissed with costs.

ZILLAH DACCA.

THE 12TH DECEMBER 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 67 of 1845.

Appeal from the Principal Sudder Ameen of Dacca, Mr. James Reily.

Moulvee Abdool Allee, Appellant,

versus

Meer Muwazim Hossein, Respondent.

SUIT to recover the value of personal property, rupees 792.

Huyatunnessa Khanum was also a defendant in this suit. She was excluded by the principal sudder ameen, Mr. Reily, who decreed the amount against the appellant, 12th July 1845.

The principal sudder ameen observes in his decree that Abdool Allee has appeared through a vakeel, but has not answered the claim, his silence was therefore taken as an admission of the claim.

Appellant states the other defendant, his mother, answered, and therefore he did not answer—that his answer is the same as hers.

The reasons assigned by the appellant for not answering the claim are frivolous. He has wilfully neglected to defend his suit in the lower court. Conformably therefore to Circular Order, dated the 12th March 1841, the appeal is dismissed with costs.

THE 17TH DECEMBER 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 73 of 1845.

Appeal from the decision of Mr. James Reily, Principal Sudder Ameen of Dacca.

Kishen Chund Shah and others, Appellants,

versus

Radhanath Race and others, Respondents.

SUIT for possession of mouza Kulasoor mootaluqa hissa six annas, pergunnah Khuleelabad, valued with mesne profits at rupees 2709-7-19 gundas.

The respondents, plaintiffs in the lower court obtained a decree on the 6th September 1845.

The decision of the principal sudder ameen is reversed, and the property decreed to appellants, under mutual agreement of the parties recorded in the case; the parties to bear their own costs respectively.

ZILLAH DINAGEPORE.

THE 12TH DECEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 7 of 1844.

*Appeal from the decision of Moulvee Mahomed Khoorshed,
Principal Sudder Ameen.*

Anund Gopal Das and Kishoree Dasse, (Plaintiffs,) Appellants,

versus

Kūdūm Ali, (Defendant,) Respondent.

CLAIM, possession of 5 beegahs, 11½ cottahs of lakheraj land, being part of 17 beegahs, sold by the defendant's father. The defendant pleads that only 13½ of 21 beegahs were sold. The principal sudder ameen dismissed the case on the evidence for the defendant, supported by a document from the collector's office, regarding the said 21 beegahs, the non-specification of orchard or residence in either "kawala" or "kaboolot," filed by the plaintiffs, and the fact that the "*ex parte*" summary decision in the plaintiffs' favor by the collector was reversed by the same authority in the year following. Plaintiffs state that the land is part of 17 beegahs sold by the defendant's father, by two "kawalas," the one for 13½ beegahs duly registered, the other for 3½ beegahs, but not registered; that in 1242, they purchased this and other land from the person to whom it was sold by the defendant's father, as per registered "kawala" in which both the aforesaid "kawalas" for 13½ and 3½ beegahs are specified; that defendant in 1241, gave a "kaboolot" for the land in dispute, and that they obtained a summary decision against him for the rent of 1245. Now it is clear as above stated that the defendant's father had 21 beegahs, of which the defendant asserts only 13½ were sold, leaving 7½ in his possession. The point for decision therefore is the authenticity of the "kawala" for 3½ beegahs and kaboolot for 5 beegahs, 11½ cottahs. I consider both spurious for the following reasons. By the registered "kawala" 13½ out of 15 beegahs were sold, leaving only 1½, yet the other one purporting to be for the remainder is for 3½ beegahs and not registered. The "kaboolot" of 1241, is said to have been made over to the plaintiffs when they purchased in 1242; and the first use made of it appears to have been in the *ex parte* summary decree for the rent of 1245, in which a portion of the rent is said to have been previously paid, though the plaintiffs' claim for the rent of the following year was disputed

by the defendant and disallowed by the collector. In both the summary suits the plaintiffs allude to the land as in Rampore instead of Rubbypore, which could hardly have occurred had the "kaboolot" (for land in the latter) been genuine. It is also most improbable that the defendant should have given a "kaboolot" in 1241, the year preceding the purchase by the plaintiffs, for land on which he and his father had lived for years, and that there should be no specification either in "kaboolot" or "kawala" of the land containing a dwelling and orchard. On the above grounds I dismiss the appeal with costs.

THE 16TH DECEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 286 of 1846.

Appeal from the decision of Ramnarain Rai, Moonsiff of Puteeram.

Gobind Chunder (Defendant,) Appellant,

versus

Gourmoney Bewa, (Plaintiff,) Respondent.

CLAIM, rupees 27-14-9, due on a bond for rupees 25, dated the 2d of Bhadoon 1242. One defendant, "Juggernath," acknowledges the debt, but Gobind Chunder charges him with being in league with the plaintiff, and asserts that he himself was on the above date at Dinagepore, where he witnessed a bond. The case was formerly decreed and remanded in appeal as "Gobind Chunder" then filed copies of evidence and a bond in another case which so far bore out his assertions, though he could give no good reason for not having filed them in the moonsiff's court. The moonsiff has again decreed the case on the evidence for the plaintiff which is clear and satisfactory, overruling the appellant's plea of not having been at Puteeram on the date of the bond, as the evidence of his witnesses was contradictory, and his signature corresponded with that on the bond. I am satisfied from the documents and evidence in this case, as well as the one above alluded to, No. 277 of 1845, now pending in appeal, that the moonsiff's decision is just, and I therefore dismiss the appeal with costs.

THE 17TH DECEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 277 of 1845.

Appeal from the decision of Radhamohun Chowdhree, Moonsiff of Rajarampore.

Gourmohun and Kirpenath, (Defendants,) Appellants,

versus

Kiret Chund Baboo, (Plaintiff,) Respondent.

CLAIM, rupees 130-1-11½, due on a bond for rupees 100, dated the 2d Bhadoon 1242, and payable in 1243. Both defendants

deny the authenticity of the bond. Gourmohun states that from 1240 to 1243, he was in another part of the country where he held land and received receipts for the rent of it, and attributes his being included in this suit to his having given evidence in a case between the other defendant and the plaintiff. "Kirpenath" pleads that he was a minor in 1242, and in another part of the country, learning to read and write, and urges that if payments as entered on the bond had actually been made by him they would have been in his hand-writing. He attributes this claim against him to the plaintiffs having been defeated in several cases which originated in an unjust demand made against him for 1244 to 1246, when he was the plaintiff's putwaree. He states that having been kept in durance for 11 days by a dependant of the plaintiff and mulcted of 15 rupees, he complained in the foudaree, when his opponent was fined 25 rupees, and he directed to sue in the civil court for the 15 rupees, which he did and obtained a decree, while the plaintiff's suit against him for an asserted balance was dismissed. The moonsiff decreed the case on the evidence for the plaintiff to the bond, payments, and wish of the defendant, "Kirpenath," to give an instalment bond for the balance, overruling the documents and evidence for the defendants on the ground of insufficiency, rarity, and discrepancies. The non-production of the plaintiff's "khatabye" he considers immaterial, the loan being said to have been a private one by the plaintiff and not by his firm. The fact that a decree was given against one of the witnesses to this bond for money borrowed at Puteeram on the day he is said to have attested this bond at Dinagepore, the moonsiff gets over by attributing it to a conspiracy between the Puteeram plaintiff, (an old woman,) and the defendants in this case. The main prop of this opinion is that this case was instituted in June 1844, and the evidence of the said witness taken in December following, while the Putneeram case against him was not instituted until March 1845. I do not concur with the moonsiff in respect to the evidence and documents for the defendants, which are as satisfactory as such things generally are, regarding age, employment, and residence some 10 years back. There is at all events nothing improbable in the assertions of the defendants, or in what they have brought in support of them: on the other hand there is not even the shadow of probability in favor of the plaintiff, who now declines to produce his "khatabye" on the plea that the loan was a private one and not made by his firm, while in his petition against the moonsiff's former decision nonsuiting his claim he distinctly stated to the contrary. The plaintiff's reply is evasive, made up of denial and assertion without an attempt to account for "Kirpenath's" success in several cases against him, while he remained inactive regarding this bond. The decision of the moonsiff of Putneeram has been confirmed in appeal, and I see

no reason whatever for suspecting the plaintiff in that case of having entered into a conspiracy with the defendants in this one. On the above grounds, I reverse the moonsiff's decision and decree the appeal with costs.

THE 18TH DECEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 2 of 1846.

*Appeal from the decision of Moulvee Mahomed Khoorshed,
Principal Sudder Ameen.*

Syud Mahomed Bux, (Plaintiff,) Appellant,

versus

Kirpomoye Dassey, guardian of Guntaserry and Naraince,
minors, (Defendant,) Respondent.

THIS suit was instituted to recover possession of 178 beegahs, 8 cottahs, "jumma" rupees 189-3-2-2, with mesne profits, claimed by the defendant as 76 beegahs, 19 cottahs, "istumrar jumma" rupees 53-9-7. The defendant having been put in possession by a summary decree of the collector, the plaintiff's suit for arrears of rent was dismissed. This suit was nonsuited because the plaintiff's estate had been sold, but was remanded for revision on the ground that it was nevertheless necessary to decide whether the plaintiff was entitled to rent previous to the sale of his estate at the rate demanded, or merely at the rate allowed by the defendant. The case has now been dismissed on the ground, that the plaintiff failed to prove the land liable to a variable "jumma," and that the defendant's "istumrree pottah," dated Bysack 1130 B. S., is supported by sundry measurement papers obtained from the collector's office, and discharges for rent, including two by the plaintiff's gomashta.

The "pottah" of 1830, I do not consider genuine, as there is no signature on it, and the seal does not bear the name of the Rajah by whom the "istumrar" is said to have been created. The other documents do not in any way prove that the land was held at a fixed "jumma" for more than 12 years before the permanent settlement, and the plaintiff purchased the estate at a sale for arrears of revenue. I therefore do not concur in dismissing the plaintiff's claim, but, before finally disposing of the case, it is necessary to ascertain what quantity of land in the plaintiff's estate was held by the defendant, and at what rates it was assessed. The case is accordingly remanded for revision.

ZILLAH HOOGHLY.

THE 5TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 1 of 1845.

Collector's Appeal.

Oodoy Chand Achargee and Persunno Chunder Acharjee,
(Defendants,) Appellants,

versus

Petamber Dhutt, (Putnee Talookdar,) (Plaintiff,) Respondent.

CLAIM for the reversal of an order of the collector, and establishing the fact that the land in dispute is lackeraj, rent free, laid at the sum of rupees one hundred and forty-five, annas thirteen.

The plaintiff in his plaint sets forth, that the father of the defendants, Chooramonee Acharge, &c. by name Guddadhur Acharge, had instituted a suit under Act IV. of 1840, against the plaintiff, stating that he the plaintiff had dispossessed him, Guddadhur Acharge, of two beegahs, three cottahs and a half of alleged lackeraj rent free land, and obtained possession of the land aforesaid in dispute, under orders from the court of the sessions judge: but the land in dispute being three beegahs, nine cottahs and a quarter, not two beegahs, three cottahs and a half, as alleged by Guddadhur Acharge, and being situated within his talpook, Rungoopore Chuek Chattaackee, Maul Khamar, the plaintiff, Petamber Dhutt, instituted a suit in the court of the collector, to establish the fact that the land aforesaid in dispute was maul rent paying land as formerly.

The defendants, in their answer, state that the land aforesaid in dispute has been held lackeraj rent free by their ancestors through successive generations, from a time previous to the accession of the East India Company to the dewanny of Bengal, up to the present time; that in the *fysallah* of a suit instituted by their father, (No. 362,) the land aforesaid now in dispute was proved to be lackeraj, rent free, the *taidaud* of which is among the official records in the office of the collector, and bears the number, No. 41,040, besides *phoolbundee dhakhillahs* given by the former talookdar and the plaintiff; the land aforesaid in dispute is stated to be rent free: hence it is evident that the plaintiff instituted this suit merely to harass and annoy the defendants, in contravention of the *dhakhilas*.

The collector, on the 4th of March 1845, decreed the case on the grounds, that the defendants could not file any valid document, to prove that the land aforesaid in dispute is lackeraj, rent free; the *taidaud* alone, unsupported by any other valid documents, not

being considered sufficient evidence to establish the fact that the aforesaid land in dispute is lackeraj, rent free: that the plaintiff clearly proved by the lowazimah papers filed by him, and by the evidence of his witnesses, that the land aforesaid in dispute, is mau, rent paying.

From a fysalla, No. 382, dated 22d of June 1834 A. D., the dakhillah for charges of phoolbundie of lakheraje land, dated Aghun 13th 1239 B. S., signed by Thakoordass Ghose, on behalf of Petamber Dutt, and a copy of a roobukaree of the sessions judge, dated 9th December 1843 A. D., and the copy of the taidaud, No. 41,040, and a copy of the fysalla under Regulation VII. of 1799 A. D., No. 1738, dated 25th of July 1836 A. D., and a roobukaree of Roy Radhagovind Shome Baboo, sudder ameen, dated 11th June 1836 A. D., filed by the defendants, as well as from the evidence of their several witnesses—that the land aforesaid in dispute, viz. the two beegahs, three cottahs and a half, was held in possession as lakheraje by their, the defendants', father Guddadhur Acharge, has been clearly and distinctly established and proved. The lowazimah papers filed by the plaintiff could easily have been fabricated and filed by a talookdar, who is even able to induce his own people to give evidence in his favor, hence I cannot give any credence or weight to them. I decree this appeal, and reverse the decision of the collector, dated the 4th of March 1845 A. D. The costs of both courts are to be paid by the respondents.

THE 5TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 2 of 1845.

Collector's Appeal.

Debnarain Roy, (Plaintiff,) Appellant,

versus

Bhowanee Churn Bose, (Talookdar,) Gorachand Sein, (Gomashta,) Myrtonjoy Moozoomdar, and Nusseeram Sawunt, (Defendants,) Respondents.

THIS claim was to obtain the reversal of an order of the collector, and for establishing that the land in dispute being lackeraj, rent free, calculated at rupees one hundred and eight.

The plaintiff sets forth in his plaint that the three beegahs of land within the east plain of the village Nowparah, in Seetakhalee Chuck, are situated within the lackeraj, rent free lands enjoyed by him; that he the plaintiff having quarrelled with the defendants, Nusseeram Sawunt and Bhowanee Churn Bose, they, the defendants, leagued together, got the defendant, Myrtonjoy Moozoomdar,

to institute a suit under Act IV. of 1840 A. D., before the magistrate of Howrah, purporting that the aforesaid land, four beegahs, seventeen cottahs, which in fact is three beegahs, was his father's maul, rent paying land, and that the plaintiff had caused him to be dispossessed; and he obtained an order from the magistrate to be put in possession of the aforesaid land: for the reversal of which order, and to establish, that the land aforesaid is lackeraj, rent free land, and also to obtain possession, the plaintiff instituted the suit in the court of the collector.

The defendant, Bhowanee Churn Bose, states in his answer, that the land aforesaid in dispute is by measurement four beegahs, seven cottahs and three quarters, maul land, rent paying, which rent is duly realized.

The defendant, Myrtonjoy Sawunt, in his answer states that he holds possession of the three beegahs (which by measurement is found to be four beegahs, seventeen cottahs and three quarters,) being the land aforesaid in dispute, and pays an annual rent of ten rupees and four annas to the talookdar.

The collector, on the 18th of April 1845 A. D., dismissed the case on the grounds that the plaintiff could not produce any sunnud, nor char, nor any valid instrument nor documents to establish the fact that the land in dispute aforesaid, was rent free, lackeraj, that the taidaud filed by the plaintiff is of itself insufficient, unsupported by other valid evidence, to prove that the land aforesaid in dispute was lackeraj, rent free.

The appellant being dissatisfied with the decree of the collector preferred this appeal, on the grounds that he had filed a char, dated 10th of Bysack 1199 B. S., under the signature of a Mr. Brooke, as also another, dated 12th Joistee 1195, also a taidaud from the official records of the office of the collector, that he produced three witnesses who distinctly affirmed that the land aforesaid in dispute was lackeraj, consequently the assertion made by the collector in his fysallah that with the exception of the taidaud no other documents had been filed by him, the plaintiff, must have been inadvertently and erroneously made.

On examination of the char, dated the 10th of Bysack 1199 B. S., filed by the plaintiff, there cannot be a doubt but that it is what it professes to be, an authentic and original document, and therefore valid, and from the copy of the taidaud, No. 16,803, dated 1209 B. S., filed by the plaintiff, together with the evidence of his several witnesses, it is distinctly established and proved, that the plaintiff had for a long period held possession, and enjoyed the land aforesaid in dispute as lackeraj, rent free: hence I am unable to confirm the decree of the collector, but I decree this appeal and reverse the decision of the collector, dated 28th April 1845 A. D. Costs of both courts to be paid by the respondents.

THE 5TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 7 of 1844.

Collector's Appeal.

Kasheenaut Sawunt, (Defendant,) Appellant,

versus

Byednauth Biswas, (Plaintiff,) Respondent.

THIS claim is on account of certain "sheewutter" "mohothran" lackeraj, (rent free) land, valued at two hundred and nine rupees, four annas.

From the papers in this case it appears that the plaintiff, (respondent,) purchased in the year 1242 B. S., from one Kallee-pershad Roy, lot Nazeeram Nuzzurpore, and had his name registered in the books of the collector's office, and holds possession of the same. The appellant having omitted to pay his rent for the land cultivated by him for the years 1242 and 1243 B. S., the respondent, Bydeenauth Biswas, instituted a suit in the moonsiff's court for those arrears of rent against the appellant, Kasheenauth Sawunt, who alleged that nine beegahs within the aforesaid land is rent free. On this the respondent filed a suit in the collector's court, to establish the fact of the aforesaid land in dispute being maul, (rent paying) land, laid at two hundred and ninety-nine rupees, four annas.

The appellant in answer states that of the land given by his ancestors for religious purposes, lackeraj, dewutter, and mohatran, part is cultivated by himself, and part of it is let out in farm, and that he (the appellant) is in possession of the aforesaid land: that in the year 1211 B. S., the deeds and papers regarding this property, the aforesaid land in question, were destroyed by fire, his brother's house having been burnt down, that the respondent had falsely claimed the land as maul (rent paying) and filed a suit in the court of the moonsiff of Oolobereea, under the provisions of Regulation V. of 1812, when from the evidence adduced by the appellant, the moonsiff dismissed the case, and decided that the land in dispute was rent free. The respondent subsequently again filed another suit, No. 135, in the moonsiff's court, against the appellant for arrears of rent, which was likewise dismissed, and that one of the ryots under the appellant, by name Moizooddeen, filed a suit, No. 156, against the respondent, for having taken by force a kubooleeaut from him, the aforesaid Moizooddeen, in the moonsiff's court, the moonsiff on the 14th of September 1840, decreed the case, &c.

The officiating collector, Mr. D. J. Money, on the 10th of May 1844 A. D., decreed the case, on the ground that the appellant could not prove that the aforesaid land in dispute was lackeraj, rent

free, for he did not file any sunnud from the proprietor of the land, nor any char nor sunnud from the officers of the resumption department, on the part of the Government of Bengal; that in the taidaud filed by the appellant, three tanks are stated to be situated within the land aforesaid in dispute, whereas there is not any tank within the aforesaid land, that the appellant's answer is contrary to the kyfeeut, or the remarks embodied in the taidaud, that some of the appellant's witnesses call the land in dispute by the name Nazirannuzzurpore, and some name it Nuzzurpore, consequently the objections offered by the appellant cannot be admitted, moreover the documents filed by the respondent prove the land aforesaid in dispute to be maul, rent paying.

The appellant, being dissatisfied with this decision passed by the collector, preferred this appeal on the grounds set forth in his petition of appeal.

I consider the decision of the collector to be correct, and shall not therefore disturb it. The appeal is therefore dismissed with costs.

THE 5TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

. No. 9 of 1844.

Collector's Appeal.

Roop Chand Koloo; (Defendant,) Appellant,

versus

Syud Ahmud, (Plaintiff,)

Rammohun Paul, Ramdhon Paul, Bhowanee Churn Paul, Juggomohun Muddock, and Brijmohun Muddock, (Defendants,) Respondents.

THIS claim was for the reversal of the orders of the collector, and for the establishment that the land in dispute was lackeraaj, calculated at one hundred and forty-four rupees.

It appears that out of the aymah land belonging to the plaintiff, Syud Ahmud, in turruff Diggungo, pergunnah Boro, six and half beegahs are in possession of the appellant, Roop Chand Koloo, namely, five beegahs as rent free, and one and a half as maul, rent paying land, on which the plaintiff, Syud Ahmud, instituted a suit in the court of the collector under Regulation II. of 1819 A. D., against the appellant, &c., for rupees one hundred and forty and four.

The defendant, Rammohun Paul, in his answer states that the land in dispute is situated within the pergunnah Khosaulpore as

lakeraj, in the village Buddeepore, and was purchased by his ancestors, and which Rammohun Paul sold to Punganund Muddock, the father of Juggomohun Muddock.

The defendants, Juggomohun Muddock and Brijmohun Muddock, in their answer, state that the five beegahs aforesaid, together with five other beegahs of land purchased by them, making in all ten beegahs, had been sold by them to the father of the appellant, Ramdone Koloo.

The defendant, Roop Chand Koloo, in his reply, states that his father had purchased the ten beegahs aforesaid of land, and is in possession of the same, and that the plaintiff has no aymah right in it.

The collector on the 17th of June 1844, decreed the case, on the grounds that the defendants could not produce any valid documents, which were worthy of credit, to prove the land aforesaid in dispute was rent free; that the fussul char filed by them, under the signature of Mr. Marriott, could not be proved agreeably to Regulation XIX. of 1793, to have any connexion with any taidaud, for no such taidaud could be found as being in the official records of the collector; moreover the char in question does not appear to be an original and true one; that in the sunnud, dated 1156 B. S., filed by the appellant, it is stated that Ramkunto Dhutt, *talookdar*, gave bremutter land, now in the year 1156 B. S., there could not be an officer called a "*talookdar*," for there was not then a division or portion of land called a "*talook*," there is therefore every reason to suspect the document in question is a fabricated or forged one.

From the documents filed by the plaintiff, and from the evidence of his witnesses, and the "*lawazima*" papers, it is proved that the land in dispute is the aymah land of the plaintiff, and the rent is annually realized from it.

The appellant being dissatisfied with the above decision preferred this appeal, on the grounds, that the collector had not instituted any investigation or enquiry on the point as to within which purgunnah the land aforesaid in dispute is situated; that from the evidence of his witnesses, and the document filed by him, the aforesaid land in dispute was proved to be rent free; that the *lawazima* papers filed by the respondent, Syud Ahmud, are not legally authenticated, yet notwithstanding all these proofs the collector had unjustly decided the case against him.

The documents filed by the appellant clearly appear to have been recently written on old paper, and the evidence of his witnesses is not worthy of credit. Under these circumstances, and from the reasons stated in the decree and *fysalla* of the collector, I see no just ground to interfere or disturb that decision, dated June 17th 1844 A. D., therefore I dismiss this appeal with costs of this court; and confirm the decision passed by the collector.

THE 5TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 10 of 1844.

Collector's Appeal.

Muddun Mohun Khan, (Defendant,) Appellant,

versus

Muddoosoodun Lushkur, (Plaintiff,) Respondent.

CLAIM for the reversal of an order of the collector, and for the establishment of the fact of the land in dispute being maul, (rent paying,) calculated at rupees seven hundred and ninety-four, annas nine, gundahs nineteen.

The plaintiff instituted a suit in the court of the collector, praying that the three beegahs of land in the village named Mukhoowah, and eight beegahs, sixteen cottas, and ten chittacks and a half, in the village named Gwoahbeerea, making in all eleven beegahs, sixteen cottahs, and ten chattacks and a half of lackeraj rent-free and bremutter land, which he had purchased from Bholanauth Chukerbutty and others, might be established as lackeraj, rent-free land, and also for mesne profits. . . .

The defendant in his answer states that the land in dispute is ten beegahs and a half of maul land, and that the land aforesaid is situated within talook Podhra which is his property, and the rent of which maul land is duly realized.

The collector decreed the case on the 24th of July 1844 A. D., on the ground, that from the deeds of sale and from the copy of the report of the ameen in the case, No. 222, before the moonsiff, filed by the plaintiff, it is clearly established that the land (belonging to the plaintiff) aforesaid within the villages Mukhoowah and Gwoahbeerea, is lackeraj, rent-free land: that from the original "char," bearing the signature of Mr. Marriott, and from the evidence of the witnesses for the plaintiff, it is also established, that the ancestors of the vender held the land aforesaid in dispute as lackeraj, rent-free, previous to the accession of the East India Company to the dewanee of Bengal: that the defendant could not produce any documentary evidence such as chittahs, and the lawazimah papers, to establish his statement, that the land aforesaid in dispute, was maul, rent paying; and that the land aforesaid in dispute, was situated within the talook, called Podhra, belonging to the defendant.

The appellant, being dissatisfied with the decree of the collector, preferred this appeal, on the ground that he, the appellant, had purchased at a public auction the zeemeendary of the individual, alleged to have sold the land in dispute to the plaintiff, and therefore in order fraudulently to retain the maul land aforesaid in dis-

pute, as lackeraj, rent-free, the individual vender in question leagued with the plaintiff, and induced him to file the petitions, documents, &c. to prove that the land was lackeraj, but he, the plaintiff, omitted to file the taidaud to prove that the land aforesaid in dispute is lackeraj, rent-free: that the collector had not, as laid down in Section 17, Regulation IV. 1793 A. D., instituted or caused to have instituted a local enquiry to the fact whether the land aforesaid in dispute was situated within the villages Mukhoowah and Gwoahbeerea, or not.

On the perusal of all the documents and papers of this case, and the char filed by the plaintiff, and from the evidence of the witnesses for the plaintiff, I can see no valid reason to disturb the decree of the collector, dated 24th of July 1844 A. D., for it is a just and sound decision; therefore I dismiss this appeal with the costs of this court, and confirm the decree of the collector, dated July the 24th 1844 A. D.

THE 5TH DECEMBER 1846.

PRESENT; F. W. RUSSELL, JUDGE.

No. 39 of 1845.

Principal Sudder Ameen's Appeal.

Aruffa Beebee, (Plaintiff,) Appellant,

versus

Casseenath Ghose, Doorgachurn Dhutt, Bujnah Beebee, Sulleemah Beebee, Nusseehuth Beebee, Sukeena Beebee, Keefyut Beebee, Tunzeel Ahmud, Buxoo Beebee, and Hosseina Beebee, (Defendants,) Respondents.

THIS claim was for the reversal of a sale, and for possession of a two annas, three gundahs, and two krants share of aymah kheraj (rent paying) and lackeraj (rent free) land, calculated at rupees one thousand four hundred and forty-one, five annas, eleven gundahs, and one korah.

The papers of the original suit and of this appeal shew that the plaintiff sued for the reversal of a sale, and for possession of a two annas, three gundahs, and two krants share of the aymah kheraj and lackeraj land, left by her father Hujjutoollah; and her brothers, Sheikh Hadee and Sheikh Rubbee-ool-Hussein, deceased, as her right by "Furrahez."

The defendant, Kasheenath Ghose, in his answer states, that the property in dispute belongs to Sukeenah Beebee, the wife of

Hujjutoollah, given by him as dower in her marriage contract, and that the property aforesaid was sold in a case of execution of decree, No. 308, in his, Kasheenath Ghose's, favor.

The defendant, Doorgachurn Dhutt, in his answer states, that he had purchased at the above mentioned sale under the decree, No. 308 aforesaid, one hundred and one beegahs of lackeraj, (rent free) land, in mouzahs Kotah, &c., and which land was, according to Regulation II. of 1819, resumed by the Government of Bengal, with whom he, the defendant, Doorgachurn Dhutt, settled to continue in perpetual possession.

The additional principal sudder ameen, Moulvee Mynooddeen Sufdar, dismissed this case on the 23d of September 1845, on the ground set forth in his fysullah or decree.

The appellant, being dissatisfied with the decision aforesaid of the additional principal sudder ameen, preferred this appeal, for the reasons set forth in her petition of appeal.

It is perfectly clear that the additional principal sudder ameen, Moulvee Mynooddeen Sufdar, ought certainly to have had distinctly proved before him the two following facts, asserted to be such by the respondent, Kasheenath Ghose, namely, first, whether Sukeena Beebee got the property in dispute by dowry from Hujjutoollah, and secondly, whether she was in possession of the share aforesaid prior to the sale under the decree, No. 308, under her marriage contract. Moreover the plaintiff, Arreefah Beebee, states in her plaint, that at the time of the death of her father (Hujjutoollah) she was a minor and under age. The additional principal sudder ameen, Moulvi Mynooddeen Sufdar, ought to have clearly ascertained that fact, and to have had proved before him, how long a period had passed, after that she, the plaintiff, Arreefah Beebee, had attained her majority, it was that she had instituted this suit. As the additional principal sudder ameen, Moulvee Mynooddeen Sufdar, had not noticed all these important points, his decision is incomplete and imperfect, therefore, I decree this appeal, and reverse the decision of the additional principal sudder ameen, Moulvi Mynooddeen Sufdar, dated the 23d of September 1845 A. D., and order that the case be remanded for re-trial to the present additional principal sudder ameen, Moulvi Syud Oosmaun Ali, with instructions, that the case be restored to its original number on his file, and having called for the proof on the points asserted by the respondent, Kasheenath Ghose, and ascertained the age, &c., of the minor, and the period at which the plaintiff, Arreefah Beebee, instituted the suit after she had attained her majority, and then decide the case to the best of his judgment. Each party are respectively to pay their costs for the present, and ultimately the losing party are to pay them.

The value of the stamp in the petition of appeal is to be refunded to the appellant.

THE 11TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 16 of 1846.

Principal Sudder Ameen's Appeal.

Bhojhurree Roy, Pauper, (Plaintiff,) Appellant,

versus

Peereetram Roy, Ramsoonder Roy by his son Jadoo Roy, Ramchand Roy, and Thakoordass Kamar, (Defendants), Respondents.

THIS claim is for lackeraj land and tank, and for possession of them, and for loss, calculated at rupees one thousand, nine hundred and eighty-nine.

This case having this day been brought forward it appears from the papers that the principal sudder ameen dismissed this case according to Act XXIX. of 1841, before six weeks had expired, therefore the decision is irregular and illegal. Hence I decree the appeal and reverse the decree of the principal sudder ameen, James Reily, Esq., dated 5th May 1846, and this case must be returned to the principal sudder ameen for re-trial, with orders to replace it in its original number on his file, and, having received the necessary evidence from the appellant, to re-try the suit and decide it according to the best of his judgment. Costs to be paid by the parties respectively for the present, and ultimately by the losing party.

THE 17TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 15 of 1841.

Special Appeal.

Oomachurn Chuckerbuttee, (Plaintiff,) Appellant,

versus

Bhobosoondeeree Debee, Osheneekoomar Mookerjee, Hurreenarain Chuckerbuttee, Bishonauth Paul, Guggon Chuckerbuttee, Ramshunkar Chuckerbuttee, Ramdhon Chuckerbuttee, Radhamonee Debee, Soorujmonee Debee, Kunnye Sircar, Hurreedyal Sing, Ramdoss Sheeromonee, Goverdhun Mullick, Nobbo Ray, and Suddanund Dass, (Defendants,) Respondents.

THIS suit was for the reversal of a sale, and laid at Company's rupees two hundred and ninety-nine, annas twelve.

On the perusal of the records of this case, it appears that the appellant's father, Tarrachurn Chuckerbuttee, had a share of one anna of the property left by his ancestors in his possession, and his brother Ramjeewun Chuckerbuttee, having no issue, left his one anna share to his brother Tarrachand Chuckerbuttee, the

father of the appellant, who subsequently built a house, dug a tank, and purchased other rent free and rent paying maul lands. On his (viz. Tarrachand Chuckerbuttee's) death, his son Oomachurn Chuckerbuttee, the appellant, inherited the aforesaid property.

The respondent, Bhubosoonderee Debeea, having obtained a decree against one Hurreenarain Chuckerbuttee, attached the property belonging to the appellant, believing the same to be the property of the aforesaid Hurreenarain Chuckerbuttee; and the appellant states that notwithstanding his just claim to the property aforesaid, it was most illegally sold, and therefore he, the appellant, prays for the reversal of the sale.

The respondent, Bhubosoonderee Debeea, in her answer denies the plaintiff to have any right in the property aforesaid, and repeats that it is the property of Hurreenarain Chuckerbuttee.

The late sudder ameen, Hurruchunder Ghose, decreed the case in favor of the plaintiff, Oomachurn Chuckerbuttee, on the 9th August 1839, which decision was amended by the late principal sudder ameen, Syud Ahmud Khan, on the 23d of December 1840, on the grounds that the deed of gift executed by Ramjeewun Chuckerbuttee had not been written on stamped paper; nor had it been properly witnessed: as well as, that some of the documents filed in the case by the appellant appeared suspicious.

Mr. Cunliffe, the officiating judge, confirmed the decision of the principal sudder ameen on the 26th March 1844, on a special appeal, No. 15.

The appellant, being dissatisfied with the decision of the officiating judge, Mr. Cunliffe, presented a petition, dated 12th June 1844, praying for a review of judgment, filing at the same time as a new document, an opinion of the Hindoo law officer of the Court of the Sudder Dewanny Adawlut, and a copy of the application of Pro-rosmonee Debeea, (plaintiff's mother,) which he, the plaintiff, had not been previously able to discover, shewing that the late Tarrachand Chuckerbuttee, (the father of the plaintiff,) was the talookdar of Chandbattee previous to the period on which the respondent, Bhubosoonderee, obtained the decree in the court of the sudder ameen for six beegahs of "sallee" land and fifteen cottahs of maul rent paying dhoba, which had been in the possession of Ramkunya Nyabaggees as lackeraj, and he instituted a suit under Regulation II. of 1819, against the aforesaid Ramkunya Nyabaggees, on the trial of which suit it was decided that the land aforesaid was truly lackeraj, and he the aforesaid Tarrachand Chuckerbuttee, the plaintiff's father, purchased the aforesaid lackeraj land and other lands to the extent of twelve beegahs and a half in the name of his (Tarrachand Chuckerbuttee's) wife, whose name was Pro-rosmonee Debeea, the mother of the plaintiff, from the aforesaid Ramkunya Nyabaggees and his son Ramdoss

Seromonee, on the 11th Maug 1229 B. S., from which period Tarrachand Chuckerbuttee aforesaid continued in possession of the aforesaid lands. Kadembennee states that she had purchased the talook Chandbattee from the petitioner's mother, Porosomonee Debea, who complained against Kadembennee on the 9th of Chyt 1239 B. S., for the value of the crop (on six beegahs of land) forcibly taken away by her, Kadembennee: the latter on making over the said crop to the former, the case was, on the 23d of April 1843 A. D., struck off the file. The right of the mother, Porosomonee Debee, of the plaintiff Oomachurn Chuckerbuttee, was clearly and satisfactorily proved to the six beegahs of the aforesaid lackeraj land in dispute.

On the perusal and examination of the records in this case, there appeared several reasons for submitting it to the superior court with a recommendation for a review of judgment. The reasons are as follows:—

1st.—The principal sudder ameen, Molvi Syud Ahmed Khan, and the officiating judge, Mr. Cunliffe, were both of opinion, that the aforesaid six beegahs of lackeraj land ought to be sold as being the property of Hurreenarain Chuckerbuttee; that the judge and principal sudder ameen doubted the validity of the deed of sale for the six beegahs of the sallee and other lands to the extent of twelve beegahs and a half, purchased from Ramkanye Nyabagees and his son Ramdoss Seromonee, on the 11th of Maug 1229 B. S., in the name of the mother of the plaintiff, Oomachurn Chuckerbuttee, Porosomonee Debea, previous to the execution of the decree obtained by Bhobosoonderee Debea. But as Bhobosoonderee Debea had not filed any document nor produced any evidence to establish the right and interest of Hurreenarain Chuckerbuttee to the six beegahs of land, ordered to be sold by the judge, Mr. Cunliffe, it does not appear clear how the land aforesaid could be legally sold. It also appears from the papers of the “mozahimee nuthee,” that the plaintiff, Oomachurn Chuckerbuttee, had, on the 4th Joyst 1243 B. S., put in his claim to the aforesaid six beegahs at the time it was ordered to be sold in execution of Bhobosoonderee Debea's decree; from the copy of the petition filed by Porosomonee Debea, the mother of the plaintiff, Oomachurn Chuckerbuttee, on the 9th Choyt 1239 B. S., which ought to be considered a new deed, it is clearly shewn that Porosomonee Debea, the plaintiff's mother, had purchased the aforesaid six beegahs of land in her own name; moreover, it also appears, that, previous to the presentation of the petition filed by the plaintiff on the 4th of Joist 1243 B. S., setting forth his claim to the aforesaid land when ordered to be sold, that the aforesaid six beegahs of land was in the possession of Porosomonee Debea, the mother of the plaintiff, hence, it cannot reasonably be sup-

posed that the deed of sale was, or could have been a fabricated document, because, previous to the presentation of the claim by the plaintiff on the 4th of Joist 1243 B. S., and the petition which was filed by Porosomonee Debea, the mother of the plaintiff, on the 9th of Choyt 1239 B. S., it appears that Porosomonee Debea had then purchased the six beegahs of land aforesaid in her own name.

2dly.—The decrees of the judge, Mr. Cunliffe, and of the principal sudder ameen, Syud Ahmed Khan, confirming the sale of the pooja buttee, exclusive of the one anna and a half as the share of the plaintiff, are directly in contravention of the exposition of the law as laid down by the Hindoo law officer of the Court of the Sudder Dewanny Adawlut, who declares that such property cannot legally be sold to defray the debts of any individual.

3dly.—The plaintiff proves that his uncle, Ramjeewun Chuckerbuttee, died without issue, and bequeathed his, Ramjeewun Chuckerbuttee's, one anna share to his brother Tarrachand Chuckerbuttee, the father of Oomachurn Chuckerbuttee, the plaintiff, and notwithstanding the principal sudder ameen, Syud Ahmed Khan, had rejected the deed of gift as invalid, yet he declares one half anna share to be the property of Hurreenarain Chuckerbuttee, and the other half anna share to be the property of the plaintiff, Oomachurn Chuckerbuttee, and confirmed the sale of the half anna share of Hurreenarain Chuckerbuttee. From the documents and papers of the case, it appears, that the plaintiff's father had three brothers, one of whom, Ramjeewun Chuckerbuttee, had died without issue, hence his share, according to the Hindoo law, must go to the living brother. It is also proved by the evidence of two of the witnesses for the plaintiff, that at the time of the death of Ramjeewun Chuckerbuttee, his brother Tarrachand Chuckerbuttee was the sole survivor of all the brothers, therefore the share of Ramjeewun Chuckerbuttee could not go to the nephew, Hurreenarain Chuckerbuttee, while Tarrachand Chuckerbuttee was alive.

The Superior Court were pleased to authorize review of judgment in the letter from their register, dated May 1, 1845, No. 702.

The case came on for rehearing on the 17th of December 1846, when all the papers were perused, and the wakeels heard. From the foregoing evidence, and the reasons given for the review of judgment, I decree the appeal and confirm the decree of the sudder ameen, Roy Hurruchunder Ghose, dated 9th August 1839 A. D., and reverse the decision of the principal sudder ameen, Syud Ahmed Khan, dated 23d December 1840 A. D.

All costs of all courts to be paid by the respondent, Bhubosoon-deree Debea.

THE 18TH DECEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 1 of 1845.

*Special Appeal.*Muddoosoodun Mookerjea and Issanchunder Mookerjea,
(Plaintiffs,) Appellants,*versus*Gopaul Doss Mookerjea, Bhoobunmohun Mookerjea, Rakhaul
Doss Mookerjea, and Keenaram Bundohpadhia, (Defendants,) Respondents.

THIS suit was for the possession of a lackeraj tank, with mesne profits, laid at Company's rupees two hundred and sixty.

On the examination and perusal of the papers and documents in this case, it appears that the father of Gopaul Doss Mookerjea, by name Juggutchunder Mookerjea, instituted two suits, one under Regulation XLIX. of 1793 A. D., and one under Regulation VI. of 1813 A. D., against Gooropersaud Mookerjea, the father of the plaintiffs, for the possession of a tank on rent free lackeraj land. Although he lost both these suits, his sons, (the respondents,) forcibly took away the fish out from the tank, to prevent which, the plaintiffs, Muddoosoodun Mookerjea, &c., instituted a suit for the possession of the aforesaid tank, and obtained a decree in the sudder ameen's court. Gopaul Doss Mookerjea, &c., being dissatisfied with that decree, appealed the case, which was subsequently transferred to the court of the principal sudder ameen, Baboo Roy Radhagovind Shome, who reversed the decision of the sudder ameen.

The plaintiffs then preferred a special appeal to the officiating judge, Mr. R. E. Cunliffe, who rejected the petition.

The plaintiffs on this tendered a petition, praying a review of judgment, which was presented in due form on the 27th April 1844 A. D., which petition was written on a stamp paper of the value of sixteen rupees. The plaintiffs, Muddoosoodun Mookerjea, &c., state in their petition that the ancestor of Gopaul Doss Mookerjea had admitted to the father of the plaintiffs, Muddoosoodun Mookerjea, &c., by name Raminder Mookerjea, that the aforesaid tank did not belong to them, but to the aforesaid Raminder Mookerjea, and they gave a "ladavee ikrar," to that effect, dated 25th Joystee 1174 B. S., which document was duly filed in the suit instituted under Regulation VI. of 1813 A. D., and at the time the case was dismissed, which happened on the 9th of March 1820 A. D., it was ordered that the tank aforesaid in dispute was to remain in the possession of Raminder Mookerjea, and permission was given in the same order to Juggutchunder Mooker-

jea, the father of Gopaul Doss Mookerjea, &c., to institute an original suit, should he, the aforesaid Juggutchunder Mookerjea, see fit to do so.

The plaintiffs further state that they were in possession of the aforesaid tank from the 9th of March 1820 A. D. to 1839 A. D., a period exceeding twelve years, when on being dispossessed of it, he instituted a suit to regain possession, together with damages for the loss of the fish, and that according to Section 14, Regulation III. of 1793 A. D., and Construction No. 813, the claim of the respondents, Gopaul Doss Mookerjea, &c., cannot be admitted into court.

The papers shew that the principal sudder ameen, Baboo Roy Radhagovind Shome, reversed the decision of the sudder ameen. There is also a fysalla in a case, No. 3630, decided by the register, regarding the very identical tank aforesaid, on the 19th June 1804 A. D., filed by the respondents, in which no mention is made regarding the aforesaid tank, except that five cottahs of ground on the border of the aforesaid tank, were claimed by Gooroopersaud Mookerjea, who obtained a decree for two cottahs only; that the father of the respondents instituted a suit under Regulation XLIX. of 1793 A. D., against Ramjinder Mookerjea, the father of the plaintiffs, for the possession of this identical tank aforesaid, which suit was dismissed on the 29th of December 1804 A. D. The same person then instituted another suit under Regulation VI. of 1813 A. D., which suit was also struck off the file. It is therefore evident that the ancestors of the respondents were not in possession of the tank aforesaid, for if they had possession of it, they would not have, so frequently, had recourse to legal measures, besides which, from the time the suit of 1813 A. D., was struck off the file, the father of the respondents did not institute any original suit, consequently it is clear that the plaintiffs were in undisputed possession of the aforesaid tank for upwards of twelve years.

Under the above mentioned circumstances on the 27th April 1844 A. D., the authority of the Superior Court was solicited for a review of the judgment passed by Mr. R. E. Cunliffe on the 20th May 1843 A. D., and the Court of Sudder Dewanny Adawlut ordered a review of judgment in their letter dated February 14th 1845 A. D., No. 336.

Having attentively perused and examined all the papers and documents and heard the arguments of the wakeels in this appeal, I decree the special appeal, and reverse the decision of the principal sudder ameen, Baboo Roy Radhagovind Shome, dated 19th August 1842 A. D., and confirm the decision of the sudder ameen, Roy Hurruchunder Ghose, dated 2d December 1840 A. D. Costs of all the courts to be paid by the respondents.

ZILLAH JESSORE.

THE 2D DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 25 of 1846.

Appeal from Muftee Lutf Hossain, first Principal Sudder Ameen of Jessore.

Ram Chunder Ray, (Plaintiff,) Appellant,

versus

Hureenarain Sirkar, (Defendant,) Respondent.

THIS was a suit for the amount of a bond for rupees 200, with interest due on it. The bond is dated 18th Sawun 1247, and appears to have been given to the plaintiff's brother, (who is dead,) as well as to the plaintiff. The principal sudder ameen was of opinion that it was a fictitious suit, got up in order to be brought forward as proof that the plaintiff is the heir of his brother, and accordingly he dismissed the case.

The bond is legal, and is proved by the evidence of witnesses, to which no objection was made, for the suit was not defended. And although it is possible that the will of the brother, which has been produced, may not be valid; yet until it may be disputed, it may be acted on, even if it were necessary for this action that it should be produced.

Before the principal sudder ameen no one appeared to object to the will of the brother, and although his wife has now come forward to assert her claim, yet the holder of the bond had a right to realize the sum due on it. I reverse the decision of the principal sudder ameen, and give the appellant a decree according to his plaint, with costs of both suits.

THE 3D DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 506 of 1845.

Appeal from Moulvie Syud Ahnud, first grade Moonsiff of Tirkmonée.

Kashenath Nai, Suddanund Nai, Suroochunder Nai, Neelmonée Nai, Ramjy Nai, and Rai Monee Dossea, heir of Gungaram Nai, (Defendants,) Appellants,

versus

Chundee Churn Shah and Gopenath Shah, (Plaintiffs,)

Respondents.

THE defendants, or those to whom they have succeeded, had mortgaged a gatee juma, situated in Buguttee Nurundurpore, in per-

gunnah Kaliskalee, paying rent rupees 23-5-2, to one Junumjy. They are said also to have sold the same property to the plaintiffs. Accordingly Junumjy and these plaintiffs brought actions before the moonsiff, the one to foreclose the mortgage, and the other to get possession according to the deed of sale. The moonsiff declared the deed of sale good, and gave a decree for possession in consequence of it, and dismissed the suit for foreclosing the mortgage. Both suits were appealed, and disposed of by the principal sudder ameen, who declared the mortgage bond good, and, as it had a date previous to the date of the sale, he ordered possession to be given to the holder of the mortgage bond, and he dismissed the other suit because a decree could not be executed, if it were in favor of the plaintiff: he expressed some doubts, whether the deed of sale were good, but said there could be no objection to the holder's bringing an action to recover the amount of money which he had paid for the property according to the deed of sale.

This suit has accordingly been brought to recover the amount paid, viz. 60 rupees, with interest, and the moonsiff, being of the same opinion as he was before respecting the sale having been made in good faith, gave the plaintiffs a decree.

I see no reason to differ in opinion from the moonsiff respecting the deed of sale which is legal and proved, and owing to the attempts of the plaintiffs to collect rent, I think it was a *bona fide* document. The mortgage bond has been declared good, and it is beyond my province to pass any opinion on it, which being the case I cannot find that the parties on whom the notice of foreclosing the bond was served gave any intimation of the circumstance to those to whom they had sold the property; moreover I believe that when they sold the property they did not give the information that it had been mortgaged to another. It is therefore just that they should be made to return the money, and I confirm the decision of the moonsiff. The appellants will pay the costs of the appeal.

THE 3RD DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 344 of 1846.

Appeal from the decision of Baboo Radhanath Chutorjea, Moonsiff of Comercolly.

Muzher Alee, (Plaintiff,) Appellant,

versus

Ranee Taramonee and others, (Defendants,) Respondents.

THIS was an action instituted on the 9th January 1845, to try the merits of a decision under Regulation VII. of 1799, passed on

the 14th July 1843. The moonsiff dismissed the suit as it had not been instituted within 12 months from the date of the summary decision. It is stated in appeal that the suit was instituted within 12 months from the date of the receipt of a copy of the summary decision, but I have made a reference to the deputy collector of Pubna, who has reported that the copy might have been received at any time by making application for it. The decree is only for rupees 7-12 annas, was written on plain paper, and might have been had by making an application in the usual way to the officer of the court of the collector whose duty it is to attend to such matters. I see no reason for calling on the defendants to respond to the appeal, and I confirm the decision of the moonsiff.

THE 5TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 129 of 1846.

Appeal from Baboo Radhanath Chutorjê, Moonsiff of Comercolly.

Mr. William Bennett, (Defendant,) Appellant,

versus

Rajkishun Biswas, (Plaintiff,) Respondent.

THIS was a suit valued at rupees 23-12-4, instituted on a stamp of 2 rupees. Its value was counted as follows. Mr. William Bennett brought an action against Rajkishun Biswas, his tenant, under Regulation VII. of 1799, for rupees 10-1-8, and got a decree in his favor. The tenant deposited that sum with the costs of the suit, amounting together to rupees 13-10-8, and instituted a civil action to try the merits of the decision, counting the value of his suit by the amount of the plaint of the summary suit, and the amount with costs of the decree. This was unnecessary and a stamp of one rupee would have carried the plaint in the moonsiff's court. The ryot states his rent is rupees 35-3-2, and produced former receipts to shew that he had paid, at that rate. Mr. Bennett states that the rent is rupees 38-7-8, according to an agreement signed by the ryot on the 4th Jait 1249. The ryot states that he had paid rupees 35-3-2, being the full amount due from him, and for which he produces a receipt from the gomashita. Mr. Bennett acknowledged the receipt of rupees 28-6. In the month of August last I tried 15 cases between Mr. Bennett and his ryots of a similar nature to this, in which the chief dispute was respecting agreements given by the ryots the year before the expiration of Mr. Bennett's farm of the property, for a larger amount than they stated they had formerly given.

In this suit the agreement on which Mr. Bennett founded his summary suit is dated on the same day, viz. 4th Jait, as the agree-

ments in some of those cases, and it is witnessed by the same persons on whose evidence I could not place any confidence. The moonsiff believed the receipt of the ryot to be genuine, and, not thinking that the agreement held by Mr. Bennett was good, gave a decree to the ryot to get back the money he had deposited. I confirm his decision, except that one rupee must be deducted from the costs owing to the plaint having been written on too large a stamp, and that the moonsiff has made an error in decreeing rupees 10-1-8, instead of rupees 13-10-8. The appellant must pay the costs of the appeal.

THE 5TH DECEMBER 1846.

PRESENT : E. BENTALL, JUDGE.

No. 303 of 1844.

Appeal from Kazeo Mohumud Sabir, Moonsiff of Kaloopole.

Mohun Doss, Gorachand Doss, Chunde Churn Kur *alias* Chunde Pershad Kur, and Ramanund Chukabuttee, (Defendants,) Appellants,

versus

Esur Chunder Ray, (Plaintiff,) Respondent.

THIS was a suit made to recover damages for the non-performance in the year 1245 of a contract, dated 12th Magh 1241, to cultivate indigo plant for 10 years from the last named date, and to settle an account which had arisen in consequence of the contract. The suit had been brought against the appellants and 53 other persons who were said to have abetted the breach of contract, and a decree was given by the moonsiff against the 3 of the appellants, whose names are attached to the contract, and against 6 other persons, for instigating the breach of it, among whom was Ramanund Chukabuttee.

In appeal the plaintiff was nonsuited by me, because on the back of the bond it was distinctly specified what was the obligation of each individual as is required by Regulation VI. of 1823, Section 8, and because I considered that each obligation should have formed a separate suit; but the case was ordered by the higher court to be tried on its merits, because in the body of the deed of the engagement the persons who signed it made themselves responsible each for the others in distinct terms.

Ramanund Chukabuttee being dead, no heir is forthcoming to proceed with the appeal, and he must be considered as not having made an appeal.

The plaintiff, besides the bond which has been attested by the signature of four witnesses (only one of whom however could be produced to give his evidence,) produced his account books for

1244, in which balances appear against Mohun Doss, Gorachand, and Chunde Pershad separately, each account appears to have been made up in one page, and signed by the person against whom it stood, and attested by witnesses after the manner of a bond, and none of them could be admitted in court as bonds signed by the appellants without having a stamp, but such books may be admitted to shew that the account arising from the deed of contract has been carried on from year to year, and accordingly in appeal I called for the books of the factory from the year 1240, and according to them there was a balance when the bond is said to have been signed which agrees with the balance which existed at that time according to the bond; and I find that the account has been carried on from year to year. The dispute between the parties is whether such a bond was ever given and whether they ever cultivated indigo from 1241, and the factory books are said to have been manufactured for this case. There certainly has been very great delay in producing them in court, and they have been produced at different times although the factory is near the station, their appearance is very much against them both inside and outside. Under these circumstances I have taken the opinion of a jury consisting of four persons, against whom no objection could be made by either side, and who were allowed to be able to give good opinion. They are unanimous in declaring the books forged, and I believe they have given a correct opinion. Under these circumstances I reverse the decision of the moonsiff. The respondent must pay the costs of both suits.

THE 5TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 130 of 1846.

Appeal from Baboo Radanath Chatterjea, Moonsiff of Comercolly.

Mr. William Bennett, (Defendant,) Appellant,

versus

Hadee Sheikh, (Plaintiff,) Respondent.

THIS was a suit similar to the one I have this day decided, No. 129 of 1846. Mr. Bennett had brought a suit under Regulation VII. of 1799, founded on an agreement dated 4th Jait 1249, in which the ryot's rent was stated to be rupees 25-7-2; he said he had received rupees 18, and that there was due to him with interest rupees 8-5-1, and he got a decree for that amount. The ryot deposited the amount of the decree, with the costs, being together rupees 11-14-1, and brought a civil action to try the merits of the summary decision. He states his rent to be rupees 24-8-6, and he has produced a receipt in full from the gomashtha, whose duty it had been

to collect the rent. For the same reasons as are stated in suit No. 129 of 1846, and more fully in suit No. 58 of 1846, decided on the 22d August 1846, I do not think that the agreement is good, and I see no reason to doubt the receipt of the ryot. The moonsiff gave the ryot Hadee Sheikh a decree for the amount he had deposited, viz. rupees 11-14-1, and I confirm his decision, except that the plaint has been written on a stamp of 2 rupees, whereas a stamp of 1 rupee would have been sufficient. One rupee must be deducted from the costs.

THE 5TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 304 of 1844.

Appeal from Kazeer Mohumud Sabir, Moonsiff of Kulloopole.

Geredur Doss, Gobind Doss, and five others, (Defendants),
Appellants,
versus

Esur Chunder Ray, (Plaintiff,) Respondent

THIS was a suit to recover rupees 97-2-7, damages for the non-fulfilment of a contract to cultivate indigo plant and to settle an account which had arisen in consequence of the contract. The contract was, that the seven persons who signed the deed would cultivate a certain portion of indigo plant for the consideration of 5 rupees due from them, and 10 rupees, 2 annas, advanced, and that they would continue to do so year by year for ten years. On the back of the deed it is stated what quantity each shall cultivate. The deed is dated 14th Phagoon 1238, corresponding with 25th February 1832, and the suit was instituted before the moonsiff on the 4th April 1843 for not having fulfilled the contract after the year 1245 B. E., or 1838 A. D. The suit was brought against the contractors or their heirs, and nine other persons who had instigated them to the breach of contract. In the body of the deed the engagement is made binding on those who signed it each for the other as well as on their heirs.

The moonsiff tried the suit on its merits and gave the plaintiff a decree. The appeal is tried on its merits on the precedent of suit No. 303 of 1844. It is denied by the appellants that they ever signed the contract or have ever cultivated indigo for the plaintiff.

The case is similar to No. 303 of 1844 this day decided by me, and for the same reason and on the same evidence I reverse the decision of the moonsiff.

The respondent must pay the costs of both suits.

THE 5TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 305 of 1844.

Appeal from Kazee Mohumud Sabir, Moonsiff of Kaloopole.
 Lobonee Doss, Ramjy Sirkar, and six others, (Defendants,)
 Appellants,
versus

Esur Chunder Ray, (Plaintiff,) Respondent.

THIS was a suit to recover rupees 210-13-4, damages for the non-fulfilment in the year 1245 of a contract entered into in the year 1237 to cultivate indigo plant for ten years, and to settle an account which had arisen in consequence of the contract. Seven persons were said to have entered into the contract, and the suit was brought against them and thirty-eight others who were said to have instigated them to a breach of it. The suit is similar to Nos. 303 and 304, and the papers have been examined together. For the same reasons as I have given in the former of those suits, I reverse the decision of the moonsiff. The respondent must pay the costs of both suits.

THE 8TH DECEMBER 1846. .

PRESENT: E. BENTALL, JUDGE.

No. 17 of 1846.

Appeal from Baboo Loknath Bose, second Principal Sudder Ameen of Jessore.

Nocouree Ferash, (Plaintiff,) Appellant,
versus

Hasem Biswas, Jureeb Ferash, Zaid Ferash, Bakir Ferash, and sixteen others. (Hasem Biswas alone defended the suit, and he alone has responded to the appeal.)

THIS was a suit for a third share of 14 beegahs 12 cottahs of land, which the plaintiff states he had inherited from his father Isabdee. The whole of the land had belonged to his father; and his two brothers, Zaid Ferash and Bakir Ferash, had each inherited a share similar to that in his claim. In the same manner the suit was for a third share of his father's interest (which he stated was an 8 annas share) in a juma of rupees 50-1 anna. Both properties are situated in Hitwaree and Bahadurpore, in turf Masna, in pergunnah Syudpore. The suit is also for mesne profits, and is valued at rupees 767.

The plaintiff states that he began to lose possession in the month of Poos 1241, and that he was gradually ousted from all except

one beegah of rent-free land. The principal sudder ameen dismissed the suit, as it could not be shewn when the plaintiff had been in possession, and when he had been deprived of it.

The plaintiff states that he inherited the right of the rent-free land from his father, but there is nothing but the evidence of witnesses to shew when his father died, and they have all given their evidence at random, and have not defined the time of his death, and their evidence is not to be trusted, and as the plaintiff allows that he has been in possession, his having been dispossessed by a relation would not extend the law of limitation beyond twelve years, or enable him to sue for his hereditary right.

The juma lands are said to have been inherited through the father Isabdee from the grandfather Deen Mohumud, who was also grandfather of Hasem Biswas. But the plaintiff states that he has been in possession, so that the cause of action is here also limited to twelve years, but no evidence which is in any degree trustworthy has been produced to shew when he was in possession, for the receipts for rent which have received a date within the limit of twelve years appear to have been newly manufactured. Hasem Biswas states that he bought the juma from the plaintiff's father for 49 rupees on the 5th Magh 1238, being however more than twelve years previous to the institution of the plaintiff's suit. I do not at present see any thing to object to in the deed of sale which has been produced, but since the plaintiff has not made good his claims, and the brothers of the plaintiff, who have taken no part in the suit, may bring a similar action to this against Hasem Biswas, I see no reason to pass a decision on the deed of sale at present. I confirm the decision of the principal sudder ameen. The appellant must pay the cost of the appeal.

THE 9TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 93 of 1846.

Appeal from Moultvie Mukbool Ahmud, Moonsiff of Tallah.

Issurchunder Paul Choudree, (Defendant,) Appellant,

versus

Ramkomar Doss and Haranund Doss, (Plaintiffs,) Respondents.

ISSURCHUNDER Pall Choudree, zemindar of pergunnah Dottea, &c. got a decision, under Regulation VII. of 1799, against his ryots, Ramkomar and Haranund Doss, for rupees 19-5-9-2. The decision was dated on the 30th September 1844, and on the 4th March 1845 the ryots instituted a civil suit on a stamp of 2 rupees, to try the merits of the summary decision. While the civil suit was pending the ryots' holding was sold in execution of

the summary decree, and bought by one Debkomar Ghose, and he was admitted as a defendant in the suit. The ryots' plaint was that they had paid their rent to one Gorachand Mukurjea, the gomashtha of Kalekomar Bose, who had the property in farm from the zemindar. No one defended the suit but Debkomar Ghose, and his defence did not relate to there having been any arrear of rent, owing to which it was proper to sell the property; but he urged that, since the summary suit was decided *ex parte* and the property had been sold in execution of it, the sale could not be upset. The moonsiff tried the suit on its merits, and gave the plaintiffs a decree, in which he not only upset the summary suit, but gave the plaintiff damages which were not sued for. This appeal has consequently been made on a stamp of 4 rupees by the zemindar, although Debkomar Ghose and Kalekomar Bose have made separate appeals on stamps of 2 rupees.

The ryots had shewn that the zemindar had given information to the judge of his having let his property in farm, and that the collector had dismissed a similar summary suit instituted by the zemindar owing to his having let the property in farm; and as this suit was undefended, I should have seen no reason to have done more than alter the moonsiff's decision as it related to the damages, if it were not that it is urged that notice of the suit was not given to the appellant.

I find that notice was served on the zemindar, and the ijaradar and his gomashtha, at the cutcherry in Runjeet Ray's house which is not the zemindar's cutcherry, and, although it is said that business is sometimes transacted there, it is not allowed to be a regular place of business. Under these circumstances I am obliged to send the suit back for re-investigation. The moonsiff may pass an order on the costs of this appeal. The value of the stamp on which the appeal has been made may be returned.

THE 9TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 94 of 1846.

Appeal from Moulvie Mukbool Ahmud, Moonsiff of Tallah.

Debkomar Ghose, (Defendant,) Appellant,

versus

Ramkomar Doss and Haranund Doss, (Plaintiffs,) Respondents.

THIS is an appeal in a suit decided on the 23rd February 1846, against this appellant and other persons, of whom Issur Chunder

Pall Choudree has made a separate appeal No. 93 of 1846, this day disposed of by me when the case was ordered to be re-investigated. The value of the stamp on which this appeal has been made may be returned. The moonsiff may pass an order on the costs of this appeal.

THE 9TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 95 of 1846.

Appeal from Moulvie Mukbool Ahmud, Moonsiff of Tallah.

Kalekomar Bose and Mudosudun Gose, (Defendants,) Appellants,

versus

Ramkomar Doss and Haranund Doss, (Plaintiffs,) Respondents.

THIS is an appeal from a decision of the moonsiff dated 23d February 1846, against which one Issur Chunder Pall Choudree has made a separate appeal No. 93 of 1846. The suit has this day been already ordered by me to be re-investigated. The moonsiff may pass an order on the costs of this appeal. The value of the stamp on which the appeal has been made may be returned.

THE 10TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 11 of 1846.

Appeal from Baboo Loknath Bose, second Principal Sudder Ameen of Jessore.

Kolash Bebee, Wussemunnissa, Orafunissa, Hurmonissa, and Husseba Bebee, (Plaintiffs,) Appellants,

versus

Rutun Bebee and 28 other persons, (Defendants,) Respondents.

THIS was a suit for possession of a fair and lawful division of a property, which had been held free of Government tax, but was resumed under Regulation II. of 1819, and is situated in pergunnahs Brimapore and Huppanea and Gyrwaris and Batkeamara and pergunnah kismut Taraogeal. The property was a jagée of which their ancestors had a half share; and the plaintiffs state their lawful right according to the annexed pedigree to be a 9 a. 6 g. 2 c. 2 c. share of what belonged to him. They allow that they are in possession of a 4 a. 5 g. share, their present plaint therefore is for the difference, being a 5 a. 1 g. 2 c. 2 c. share of what belonged to

Morad Shah. The above stated part of the suit is brought against all the other surviving descendants and heirs of Morad Shah as written in the annexed genealogical tree. But the plaint also claims a 11 g. 2 c. share of talook Iktearpoor, which it is said belonged to Nadur Shah; and the partners in the talook and others, who are unconnected with the family, are made parties to this part of the suit.

The point on which the suit hinges is, whether Nadur Shah was the son of Morad Shah, or was only adopted by Mooteeranee, the wife of Morad Shah, and whether Mooteeranee made a will in favor of Goran Shah. The principal sudder ameen tried the suit on its merits, and dismissed it because it could not be shewn that Nadur Shah was ever in possession of the property.

There is no will of Mooteeranee produced, nor is there any trace of a will. All parties allow that Morad Shah was the proprietor, and there is no dispute about the genealogy of any member of the family, except that Nadur Shah is said to have been adopted by Mooteeranee instead of being the son of her husband; but I can find no trace of his having been adopted; moreover the defence, that Nadur Shah was adopted and there being no will forthcoming by which the property was left to him or to any child of his, overshoots the mark, for the whole property might then be an escheat to Government.

It appears by a copy of a letter from the secretary to the Board of Revenue to the acting collector of Jessore dated 11th September 1801, that Goran Shah was said to be the proprietor of the property, but (although it is allowed that Nadur Shah was still alive) that does not shew that Goran Shah was legally the sole owner, it does not shew more than that he might have been the acting man of business in the family, or that his father held the property in the name of the eldest son.

There was a suit in 1820 between the relations for certain crops grown on part of this property, which suit was dismissed because the right in the land had not been defined, and a dispute then existed respecting the rights of different persons.

In 1824 the jageer was attached for resumption by the collector, and disputes between the parties arose, but this only shews that the property had not been divided, and that the claims of the parties were then in existence.

It is shewn by a decree of court of the pundit of Jessore dated 19th August 1810, in the case *Sabitrea Dibeas versus Byjenath Chowdree*, that Nadur Shah was then the proprietor of 11 gs. 2 cs. share of the talook Iktearpore.

It is shewn by a decision of R. Rock Esq., dated 29th March 1793, that the jageer was held in the name of Nadur Shah. Under these circumstances I am of opinion, that the plaintiffs have a right

to get the portion of their inheritance from Nadur Shah (or which is the same thing from Morad Shah) defined.

An attempt was made by me to have the case determined amicably by arbitrators, but after they had been appointed and the dispute between all those who had taken an active part in the case had been settled, another person came forward and objected to the suit being thus determined.

I have taken the opinion of the law officer of the court on the right of the plaintiffs according to the genealogical tree which is annexed, and the vakeels of both parties agree that it would be correct if it were determined that Mooteeranee did not leave a will, and that Nadur was a son of Morad Shah. The decision of the law officer is, that the share of the plaintiffs is 9 annas, 2 gundahs, 1 crant. Accordingly I reverse the decision of the principal sudder ameen, and determine that the share of Nadur Shah's landed property, as stated above, shall be given to them in the above said proportion, after deducting what they are already in possession of. Possession is to be given by proclamation in the usual way, but no division of the property can be made except in the manner prescribed by Regulation XIX. of 1814. The appellants will receive the costs of both suits.

Mooteeranee, wife of Morad Shah.

Morad Shah
died before his wife.

Nader Shah : it is disputed whether he was the son of Morad Shah, or was adopted by Mooteeranee after the death of Morad Shah, he had two wives who are dead, he died before any of his sons.

Sofyal Bebee, died without issue.

Goran Shah, he was the only son of the first wife of Nadur Shah ; it is said that Mooteeranee left her property by will to him, but the will cannot be produced. Of the four sons of Nadur this one died, the third in order : he left two wives *Shajun Bebee* and *Rutan Bebee*, who are defendants in the suit.

Yatiba Shah, son of Nadur by his second wife, he died the last in order of all the four brothers, his widow *KOLABA*, a plaintiff, is alive.

Chetun Shah, son of Nadur by the second wife, he died the first of the four brothers, and left a widow *Khurmunissa* who is among the list of defendants, but has taken no part in the suit.

Metun Shah, died the second in order of the four brothers, but he left no issue ; he was the son of the second wife.

WUSEMUNISSA, HURMANNISSA, ORAFUNISSA, and HUSEBA BEEBEE, daughters of Yatiba Shah, are plaintiffs.

Nuseba Bebee, daughter of Chetun Shah.

Gulam Shah, son of Yatiba Shah, died without issue.

Tureba, a daughter of Goran Shah, by Rutun Bebee.

Purbun Shah, son of Goran Shah, by Rutun Bebee.

Aseba, a daughter of Goran, is dead, but left issue.

Majun is a daughter of Goran Shah, by Shajun Bebee.

THE 11TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 164 of 1846.

Appeal from Eshan Chunder Dutt, Moonsiff of Kadjura.

Debnarain Roy, (Defendant,) Appellant,

versus

Amrutmy Debea, (Plaintiff,) Respondent.

THIS was a suit for rupees 37-9, rent of land from 1249 to 1252. The moonsiff tried the suit *ex parte*, and gave the plaintiff a decree. The suit was decided on the 4th April, and appealed on the 5th May. The appellant states that he lives at Nopara, in the Sujalee division, whereas it is stated that necessary notice of the suit was served at the appellant's house in Shamnugur in the Kadjura division. I see no reason to doubt that the appellant has a house in Shamnugur in the division in which the land is situated, and I believe that the suit might have been defended before the moonsiff, and since there is nothing illegal or irregular in the record I cannot alter the moonsiff's decision, which is hereby confirmed. The appellant must pay the costs of the appeal.

THE 11TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 323 of 1846.

Appeal from Purnuchunder Mitter, Moonsiff of Sujeelee.

Sonai Gazee, (Defendant,) Appellant,

versus

Chunder Komar Shah, (Plaintiff,) Respondent.

THIS was a suit instituted on the 20th June 1846, for a bond for Sicca rupees 7, 8 annas, dated 21st Jait 1238 B. E., payable in the month of Poos of the same year: the plaint required interest also. The moonsiff tried the suit on its merits, and gave the plaintiff a decree because it had been shewn that his father to whom the bond had been given had died at least ten years before, and the plaintiff appeared in person in court and appeared about sixteen years of age. It is said that there is enmity between the parties and that the bond has been forged, but I do not think that this has been shewn or appears by looking at the bond. I think the moonsiff's decision was good, and I confirm it. The appellant must pay the costs of the appeal.

THE 15TH DECEMBER 1846.

PRESENT : E. BENTALL, JUDGE.

No. 20 of 1846.

Appeal from Moulvie Nujmool Huk, first Principal Sudder Ameen of Jessore.

Ram Ruttun Ray, (Defendant,) Appellant,

versus

Jy Gopal Pal Chowdree, Sree Gopal Chowdree, and others, all being the heirs of Neelkumul Pal Chowdree, (the original Plaintiff,) Respondents.

THERE was a suit under Act IV. of 1840, decided on the 22d October 1840, for 300 beegas of land, which on being measured by the darogah were found to be less in quantity, and 54 beegas of land situated in beel Madea, were declared to be in the possession of Ram Ruttun Ray. A suit was brought before the principal sudder ameen to try the right in the land, said to be 98 beegas 10 cottas, and to obtain mesne profits since the date of the magistrate's decision. The plaintiff stated the land to be in Dakola in his putnee talook of pergunnah Amerabad in Eschpore, and the defendant stated that it was in Akodā in a putnee talook, viz. 56 villages of Rusoolpore in pergunnah Eschpore, and that it belongs to him as a 7 annas sharer of the putnee talook. The principal sudder ameen tried the suit on its merits, and gave the plaintiff a decree according to his plaint, except that the land was decreed according to its boundaries instead of the quantity by measurement.

The plaintiff produced measurement papers of 1205 and engagements made with tenants dated in 1207, 1211, 1214, and 1219. The defendant produced measurement papers of 1226, the darogah's report in the suit under Act IV. of 1840, and 19 engagements with tenants dated at different times between the years 1234 and 1244. So far, the evidence on either side is well balanced, but none of it is of much weight, as little confidence can be placed in its being genuine.

The plaint gives the whole boundary of the jeel from which the plaintiff, as he states, was deprived of 98 beegas 10 cottas by the decision of the magistrate, and this seems to suppose that the whole of the remainder was in his possession: the vakeels of the other side do not admit this point, and it cannot at present be determined.

The plaintiff produced, besides the documents above stated, a decision of a civil court dated 8th February 1822, in a dispute between two ryots respecting 3 beegas 10 cottas of land in beel Madea in Dakola.

The principal sudder ameen has grounded his decision on this document: there can be no doubt that it is genuine: there was no dispute between these litigants when it was dated. Neither party has any desire to produce his putnee title deeds to shew his rights in beel Madea, and there is nothing now before me to lead me to suppose that the beel was divided between the two putneedaras, or rather between those from whom they hold their putnee tenures, for they hold them from different persons.

Under these circumstances I confirm the decision of the principal sudder ameen. The appellants must pay the costs of the appeal.

THE 16TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 412 of 1846.

Appeal from Kylas Chunder Deb, Moonsiff of Singhea.

Ram Dun Gose and Sumboonath Gose, Appellants,

versus

Gopal Chunder Kund and Mutoo Mohun Kund, Plaintiffs.

THE plaintiffs were wholesale dealers in salt, and brought an action against the appellants, who are retail dealers, for salt said to have been sold to them; the case was not defended, and the evidence produced was only the plaintiff's book, which did not bear the signature of the appellants on a stamp leaf, and the account had not been signed in any manner as acknowledged to be correct. Under these circumstances the moonsiff should have called on the plaintiffs to prove the delivery of the salt before he decided the case in favor of the plaintiffs. I accordingly send the case back to be re-investigated. The moonsiff may pass an order on the costs of this suit. The amount of the value of the stamp on which the appeal has been made may be returned.

THE 19TH DECEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 25 of 1846.

Appeal from Mr. J. N. Thomas, Sudder Ameen of Jessore.

Issur Chunder Ray Moonshee, (Defendant,) Appellant,

versus

Issur Chunder Mojumdar, (Plaintiff,) Respondent.

THE plaintiff's property had been attached on the 18th May 1838, on account of a pretended balance of rent: accordingly he gave security for the amount demanded, and entered a suit under Regulation V. of 1812, to contest the question of there being any

just demand against him. The decision of that suit was dated 20th November 1838, it was unfavorable to the plaintiff, and the attached property was ordered to be sold, but the sale did not take place because the person in whose charge the property had remained was not forthcoming to produce it.

The plaintiff instituted a regular suit on the 3d October 1839, before the moonsiff of Sajcelee, to reverse the decision which had been given in the suit which had been made under Regulation V. of 1812, and he obtained a decree on the 29th June 1841, which was favorable to him. The case was appealed, but the order of the moonsiff was affirmed, on the 14th April 1842, by the principal sudder ameen.

The plaintiff afterwards instituted a suit on the 3d August 1843, in the sudder ameen's court, for damages on account of the injury he had sustained by the illicit attachment, and for the loss of his property as follows: 8 plough-bullocks and 4 head of other cattle valued at 116 rupees, 8 annas, loss of profit from the 8 bullocks 400 rupees, loss of profit from 2 cows 24 rupees, a brass vessel 1 rupee, making a totality of 541 rupees, 8 annas. The sudder ameen tried the suit on its merits, and gave a decree for rupees 500, against which an appeal was made to me.

I was of opinion that the suit could not have been tried, for the law of limitation prevented its institution; and any authority which could give an order for the reversal of any act or deed, might have had the full power of carrying its order into execution by returning, as in this instance, the illicitly attached property or its value in money, and because any damages which might have been received, might have been sued for when the suit was made before the moonsiff, although the amount of the injury might have been greater than a moonsiff is able to determine. It has however been ruled by the higher court that it was quite optional with the plaintiff to have included the present claim in his former suit, or to have first sued in order to dispose of the claim of rent which had been brought against him.

The principal sudder ameen who tried the appeal from the moonsiff respecting the rent is dead, or I might refer this suit to him, but, as the case stands, I must take for granted that the attachment was illicit, not only as it related to the plough-bullocks, but because no rent was due; and, as it is not denied that the attachment was made, the only points for me to determine are, what is a fair amount of damages, and who shall pay it.

The suit was brought against the appellant and one Kudrutolla and thirteen other persons. The appellant urges that he had nothing to do with the business, but, on examining the records of the former suits, I find that the property was attached by Kudrutolla, who has throughout the suits been said to have been a servant of

Issurchunder Roy, who was not himself made a party to the suit under Act V. of 1812, but he was a party to the civil suit before the moonsiff, and the decree was given against him ; and although he appealed, the decree against him was affirmed, and he had to pay costs ; and since he could not escape from being made a party to the attachment, he must be made answerable for the damages.

It is not urged that the attached property has ever been returned. The sudder ameen has valued it at rupees 105, and the amount of his decree is rupees 500 : there is however no reason why he should have fixed on a round sum.

I see no reason for lowering the value of the property, particularly as, even had there been money due, the bullocks ought not to have been attached. I give a decree by analogy with Reg. VIII. of 1793, Sec. 52, for rupees 315, with interest from the date of the decree of the sudder ameen. The appellant must pay the costs of the appeal. As this suit includes the suit formerly tried by the moonsiff, instructions are to be sent to him, not to execute his decree.

ZILLAH MIDNAPORE.

THE 3D DECEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 170 of 1846.

Regular Appeal from the decision of the Sudder Ameen, passed on the 2nd of June 1846.

Gungaram Dey and Ghaseeram Dey, (Defendants,) Appellants,

versus

Urjoon Baryk, (Plaintiff,) Respondent.

THE respondent's vakeel represented to the court that his client, Urjoon Baryk, had been permitted to sue as a pauper, and being dissatisfied with the decision passed in the lower court was also desirous of appealing from it, and therefore presented a petition to be permitted to carry on his appeal *in formd pauperis*. His petition was therefore ordered to be filed with the nuthee, pending a perusal of the papers, when the court would satisfy itself as to whether there existed just grounds for admitting an appeal on the part of the applicant.

It appears that the plaintiff, respondent, instituted this suit to recover from the defendants, appellants, the sum of rupees 387, 8 annas, being his estimated value of crops and personal property forcibly taken from him and sold by the defendants and of loss sustained by him in consequence of their dispossessing him of his jote in their talook. He stated that he held six beegahs and eighteen cottahs of land at a jumma of rupees 20, 15 annas, 6 gundahs; that the defendants who had purchased the talook by private sale demanded more rent from him, and in 1248 forcibly seized the whole of his personal property and disposed of it.

The defendants, appellants, state that the plaintiff holds 13 beegahs, 18 cottahs of their land and gave him a kubooleut agreeing to pay a rent of 67 rupees; that he fell into arrears in 1248 and 1249, which they levied by distraining his personal property.

The sudder ameen decrees to the plaintiff the sum the defendants obtained by the sale of his property, amounting, with interest, to 52 rupees, being of opinion that the kubooleut was fictitious and that the plaintiff held land only according to his old jote; but not crediting the plea of his actual dispossession

awarded him no damages on that score, declaring him entitled to retain possession of his original jote; and provided in his decision that this decree should not exempt him from paying an increased rent if hereafter a large quantity of land was found in his possession. It appears to me that this decision does not completely meet the point at issue between the parties.

The claim of the plaintiff is not properly defined in his pleading, where he denominates it as an action to recover the value of property plundered by his landlord, the defendants, whereas the circumstances recorded in his plaint and the reply of the defendants and the evidence before the lower court clearly shew that the real question at issue is this: were the appellants justified in distraining the property of the plaintiff, respondent, for the rent they claim? if not, is the tenant entitled to compensatory damages under Section 6, Regulation XVII. of 1793?

As the sudder ameen's decision appears to me to be vague and indefinite regarding the merits of the case; and the award of 52 rupees, including interest, to have been made without inquiring into the actual loss sustained by the plaintiff from a forced sale of his property in the mofussil; and not in strict conformity with the principles of the law above quoted, or with any reasoning shewing its inapplicability to the present case; I remand the case that it may be refiled on its original number, and that the sudder ameen may take evidence on the points in question. The stamp to be returned, and as the case is remanded no order is necessary regarding the respondent's application to plead as a pauper.

THE 10TH DECEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 194 of 1846.

Regular Appeal from the decision of the Sudder Ameen, passed on the 30th July 1846.

Messrs. Cockerell and Co., (Plaintiffs,) Appellants,

versus

, Doobraj Hazrah, (Defendant,) Respondent.

MESSRS. Cockerell and Co. instituted this suit to set aside a summary award for rent given by the revenue court in favor of the defendant, Doobraj Hazrah.

They stated that they had taken a lease of certain ayma land, the property of the defendant, from the year 1249 to 1255 Umlee; but finding that the ryots could not pay the rents, and that the property had been greatly overvalued in the mofussil papers, they

had called upon the defendant to revise the agreement, which he had neglected to do from year to year, and in 1251, Messrs. Watson and Co. having taken the lands into khas management in consequence of the defendant paying them no revenue, the plaintiffs formally resigned their lease, and gave intimation to the collector. The defendant refused to ratify their resignation on the plea that they wished to give up the farm but to retain in their possession certain lands on which an indigo factory and dwelling house had been built; and accordingly sued them summarily for the rent for the year 1251 Umlee, and on the grounds of former decisions to the same effect obtained a decree. The object of the present suit was to set aside this decision.

The defendant pleaded the general issue. The sudder ameen dismissed the suit. The plaintiffs, appellants, urge in appeal that the reasons given by the defendant for rejecting their "istafa" in the collector's court are not valid ones, inasmuch as the land on which the indigo factory is situated is held by them as a jote entirely distinct from the farming lease, and in no way dependent upon its conditions. That this agreement for the farming lease was made on the faith of certain profits being secured to them from the assets of the property, which they afterwards discovered had been greatly overrated, and that in 1251, the Messrs. Watsons had taken the lands into their own management, and they could no longer pay rents to the defendant.

JUDGMENT.

It appears that these lands were formerly leased to Mr. Mackenzie on the part of Messrs. Cockerell & Co., and after the expiration of the lease, the whole village was given in farm to the plaintiffs for a lease of seven years.

There may have been disputes between the plaintiffs and the proprietor for the last three years, for I perceive the rents during that period have been regularly made the subjects of summary suits as in the present instance; but until the plaintiffs gave in a notice of their intention to relinquish the farm, the decisions of the revenue courts have not been disputed. I do not consider this act on the part of the plaintiffs gives them any real claim for exemption. They appear to have retained possession of the village after their lease was given them for at least two years, and as Messrs. Watson and Co. have also brought actions for the realization of revenue balances against the defendant, Doobraj Hazrah, up to 1251 Umlee, I agree with the lower court in considering the plea of Messrs. Watsons' khas management to be irrelevant. The real matter in dispute is whether a farmer can release himself from an engagement after having entered on possession, and performed its conditions for at least two years of the period of the lease. I think not, and therefore dismiss this appeal.

THE 12TH DECEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 195 of 1846.

Regular Appeal from the decision of the Sudder Ameen, passed on the 24th August 1846.

Messrs. Cockerell & Co., (Defendants,) Appellants,

versus

Gooroosuhoy Bhuckut, (Plaintiff,) Respondent.

THE circumstances of this case are similar to those of No. 194. Gooroosuhoy Bhuckut, representing himself to have purchased the rights and interests of Doobraz Hazrah, sued the appellants in the revenue court for such balances of 1252 Umlee, as had accrued since the time of his purchase.

The appellants having represented to the collector that this suit was similar to one pending before the sudder ameen, the case was transferred to that court for investigation, and judgment recorded on the same grounds.

It was appealed with the other case No. 194, and urged by the appellants, that the respondent had not purchased the ayma from Doobraz Hazrah, but had entered into fresh engagements with the sudder farmers Messrs. Watson and Co. As this point had never been urged in the lower court, I consider the appellants are not entitled to amend their pleadings by throwing new difficulties in the way of the respondent's claim. I therefore dismiss the appeal, confirming the decision of the lower court.

THE 14TH DECEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 206 of 1845.

Regular Appeal from the decision of the Sudder Ameen, passed on the 13th of August 1846.

Toolsiram Mytee, (Defendant,) Appellant,

versus

Doorgapershad Bhuckut, (Plaintiff,) Respondent.

THIS was a suit to set aside a summary award of the revenue court, dismissing a claim for rent on the part of the plaintiff, respondent, amounting to 591 rupees.

The plaint stated that the plaintiff was serberakar on the part of Mahomed Hossein, father and guardian of the minor Abdool Kassim, and Faiz Ally, proprietor of Bhardah and other villages, in pergunnah Agra, and brought a summary suit to recover the sum of rupees 460, 10 as., 4 gs., with interest and battah, due from the

defendant, who had taken a lease of the villages at the rental of 1,209 Sicca rupees, but had only paid rupees 809, 14 as., 13 gs., during the first year of his engagement, and failed to liquidate the balance. That the defendant had produced eleven dakhillas and a burat chitta in the revenue court: eight of these dakhillas the plaintiff admitted, amounting to the sum of rupees 809, 14 as., 13 gs., but one dakhilla No. 93 for 200 rupees and another No. 115 for 301 rupees, another burat chitta for 143 rupees, the plaintiff denied; but the deputy collector had dismissed his claim, and he now sued to set this decision aside and for payment of the balance due to him.

The defendant relied on the dakhillas as proofs of the payment of his rent, and a surplus of more than 100 rupees over the rent for 1246.

The sudder ameen observes that the question is, are the disputed dakhillas forgeries or not? The deputy collector rejected the objections on the part of the plaintiff, because, after mixing the dakhillas together, the plaintiff disowned one which he had previously acknowledged; but this the sudder ameen considers may have been misrecorded in the plaintiff's deposition, who, being a native of Behar, is not well acquainted with the Bengalee language, and thinks the question should have been further tested; that the defendants' payments are asserted to have been to the amount of 244 rupees above the annual rent, being a surplus payment altogether incredible; that moreover the seals on the disputed receipts do not correspond with those affixed to the admitted payments: but the sudder ameen more particularly relies on the khutyan and khata bhyes of the plaintiff, which were sent for and immediately produced in court. As these were written in the Nagree character, two respectable shopkeepers were sent for from the town, who went over the receipts for 1246, and reported them to amount to rupees 809-14-5, whereas no payments under the burat chitta or the dakhillas Nos. 93 and 115 were inserted any where. The payments therefore admitted by the plaintiff appeared to the sudder ameen to accord exactly with the entries in the account books, even to the items of rupees 32, 6 as., 2 gs., which the plaintiff alleges he received from the defendant, and carried to his credit without including them in the receipts delivered to him. The sudder ameen therefore decreed the plaintiff entitled to receive the amount claimed by him.

The appellant only recapitulates the substance of his former reply, and asserts that the dakhillas were given to him by the plaintiff in acknowledgment of his payments of rent.

I consider the sudder ameen's enquiry has been both full and satisfactory. The khutyan and account books delivered in by the respondent are strong evidence in his favor, and it seems altogether improbable that the serberakar without any assigned reason should

receive from the appellant a large surplus, during the very first year of their engagement, and then, after giving him receipts, bring an action against the farmer with the wilful intention of denying them. I see no reasonable grounds for admitting an appeal, and therefore reject the appellant's application.

THE 15TH DECEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 307 of 1845.

Regular Appeal from the decision of the Principal Sudder Ameen, passed on the 5th December 1845.

Rumanund Roy, (Defendant,) Appellant,

versus

Rampershad Adhikarry and others, (Plaintiffs,) Respondents.

THIS case was decided in appeal, on the 6th of April 1846, in favor of the appellant, and revived by a petition from the respondents for a review of judgment, which was sanctioned by the Sudder Court on the 6th of November 1846 (No. 1618,) under the following circumstances.

The respondents claimed certain lands (in the possession of the appellant) as heirs at law of Bulram Adhikarry, who, on his demise, had been succeeded in the possession of his property by his widow Indranee. Indranee, during her widowhood, made over a certain part of this property by deed of gift to the appellant Rumanund, and died in 1832. At her decease the respondents attempted to take possession of some part of her landed property, but were opposed by the appellant, and in consequence of their disputes the matter was brought before the fouzdar court and the appellant kept in possession.

In 1845 A.D., the respondents brought their action to recover the whole of the landed property left by Bulram Adhikarry at his death, and accused the appellant of holding it under forged documents. The appellant pleaded his uninterrupted possession for more than twelve years, and that the deeds were genuine.

The principal sudder ameen decreed possession to the respondents, because the documents were suspicious; and overruled the plea of the appellant regarding the law of limitations, because the respondents had brought their action for recovery of the lands within twelve years from the date of the order of the fouzdar court referring them to a civil suit.

It was held in appeal by this court that the appellant was entitled to hold such lands as were included in the deed of gift drawn up in his favor by Indranee, because such deed gave a bona-fide title under which the appellant had certainly held possession for more than 12 years, and which possession should not be set aside after such a lapse of time on the plea of the document itself being open to suspicion. The respondents then applied for

a review of judgment on this point ; that the deed of gift, whether spurious or not, could never convey a just title of occupancy, inasmuch as Indranee, the donor, possessed no right to alienate the property of her deceased husband, and that the possession of the donor though exceeding the period of 12 years could, under Section 3, Regulation II. of 1805, be lawfully disputed.

The question therefore for my consideration is this : does the inability of a widow to alienate her husband's ancestral property without justifiable grounds, entitle the husband's heirs to recover such property after the lapse of 12 years under the provision of Section 3, Regulation II. of 1805.

In page 58 of the sixth volume of the Sudder Dewanny Reports is the case of Musst. Shumsoonnissa and others *versus* Tunnoo Beebee, in which the law of limitations is applied to circumstances similar to those in this case.

The suit referred to was the claim of a daughter to recover her mother's share of ancestral property relinquished by her mother in favor of the claimant's maternal uncle, and which claim was upheld by the principal sudder ameen and the zillah judge, on the futwa of the moolvee to the effect, that " the mother of the plaintiff was not competent to execute a relinquishment of ancestral property to the detriment of her legal heirs." Both these decisions were overruled on special appeal on proof of uninterrupted possession for fifteen years. Though these parties were Mahomedans, and the present litigants are Hindoos, yet the principle of the law is applied to such very similar circumstances in the reported case, that I do not consider it necessary to demand a bywasta from the pundit in the present one ; for though the act of the widow in alienating her husband's ancestral property may be opposed to the shastur, yet the case quoted gives me the authority of a precedent for at once applying the law of limitations, and rejecting the respondent's claim, on the ground that they have instituted their suit after the lapse of 12 years without satisfactorily accounting for the delay. I therefore confirm the former judgment of this court passed on the 6th of April last, with any extra costs the appellant has incurred through this review of judgment.

THE 17TH DECEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 247 of 1846.

Regular Appeal from the decision of the Principal Sudder Ameen, passed on the 2d of November 1846.

Muthoormohun Nundey, (Defendant,) Appellant,
versus

Khetturmohun Dey, (Plaintiff,) Respondent.

THE plaintiff sued in the lower court for possession of ninety-two beegahs of land, and the proceeds thereof appropriated by the defendant, appellant, during the time of his possession.

It appeared from the record of the case that Shamapershad Roy, the proprietor of certain nankar lands in this district, gave the village of Goondah, with all the lands in his actual possession in putnee at a jumma of 452 rupees, to Santiram Roy, whose descendants falling into difficulties were forced to sell the property to the plaintiff's father and cousin. Subsequent to this the talook was mortgaged to the defendant by Heeramonee, the wife of Shamapershad Roy, the zemindar, and the zemindary rights became eventually vested in the mortgage by process of foreclosure, that is to say, he was declared entitled to receive the malikana payable by the putneedar. In the year 1841 A. D., the collector instituted a suit under Regulation II. of 1819, for the resumption of 106 beegahs of dewottur land in the village of Goondah, and resumed them; this resumption was subsequently confirmed in appeal by the special commissioner, and the resumed lands were let in farm to the defendant, appellant, as proprietor, pending a measurement and settlement of them.

During three years the defendant paid the revenue according to his agreement, when the lands, having been measured and discovered to be less than 100 beegahs, were ordered to be released by the revenue commissioner.

On their relinquishment by Government, the plaintiff, respondent, brought this action to recover them from the defendant, appellant, (who has retained possession,) and states that they were included in the rukba of his talook, and formerly possessed by him as the zemindar's nijdukkula dewottur, all such lands by the terms of his agreement being secured to him as part of his talook.

The principal sudder ameen in the first place refers to the proceedings under which the defendant, appellant, obtained his zemindary rights as mortgagee, and considers he is only entitled to the annual jumma of the talook, and can lay claim to no lands under the terms of the mortgage. He also considers there is really no dewottur land in the village, the ancestors of Shamapershad Roy having only registered such lands with a view to their exemption from settlement, and that the defendant, appellant, had himself urged this plea before the special commissioner when opposing the orders for resumption. That the order of the revenue commissioner, allowing defendant to retain possession of the lands when the Government claim was thrown up, was improper. That the collector's roobucarry, dated the 20th September 1844, states the plaintiff to have been in possession, and shews that the land was included in the rukba of the talook, and the resumption case to have been instituted merely on information gained from the old "taidad" papers given in at the time the old zemindars entered into a settlement for the Government revenue; that in fact the defendant had no rights at all when the commissioner of revenue directed him to be left in possession, nor can any thing be con-

ceded to him but the rent of the talook, nor can the defendant show by what right he has retained the lands in his possession since 1250 U., the year in which Government cancelled the farming lease and gave up the resumption.

The principal sudder ameen on these grounds decreed the land to the plaintiffs, with such profits as the defendant may be found to have received during the time he retained possession of the lands without a lease of them.

The appellant in his appeal urges that the talookdar has no proof of the land having been included in his putnee talook; that the terms of the kubooleet produced in court gave him all the nijdukkula dewottur lands, with the mal lands, but specifically declared all lakeraj lands bestowed by the family on others to be excluded from the putnee, and of this nature are the lands in question, which were registered in the collector's office as bestowed upon Sumbooram Chuckerbutty for the purposes of idol worship. That a hissanameh drawn up on the 21st of Sawon 1225 (before the alienation of the talook) between the brothers shews which were the nijdukkelly lands, and which were real lakeraj; that the principal sudder ameen has decided the case against appellant not on the proofs given in by the plaintiff, respondent, but on the want of right on the part of the defendant, appellant, who was permitted to farm the lands pending a settlement as proprietor with whom such settlement would be afterwards concluded.

It appears to me that the principal sudder ameen has not had any document before him to shew that the land had been in possession of the plaintiff previous to the resumption, and, previous to the engagements between the Government and the defendant. If the plaintiff was really in possession of these 92 beegahs of land when the collector commenced proceedings towards the resumption of them, it appears improbable that the plaintiff should never come forward to defend his interests; yet such is the case; though both the representative of the old zemindars and the defendant as mortgagee of this portion of the property, attempted to subvert the collector's proceedings.

The principal sudder ameen states that the proceedings before the khas superintendant prove the possession of the plaintiff when Government resumed the land: but this is not the case; the meer moonshee of one of the uncovenanted deputy collectors reported on settlement duty that both the present plaintiff and defendant claim to hold possession of the lands, included in the resumption, the former as talookdar of the village, and the latter as farmer and proprietor pending settlement, and this is apparently the first and only intimation of the plaintiff's claim; and certainly was not supported by any evidence that a court of justice could rely upon, being

only such as the meer moonshee aforesaid entered in his report. The opinion of the principal sudder ameen that the defendant, appellant, is not entitled under the terms of the mortgage to more than the jumma of the talook, and consequently can claim no *lands* or other rights in excess of it, has nothing to do with the present question, because want of right on the part of defendant can be no just argument in favor of the plaintiff's right of *acquisition*.

The question appears to me to be simply this : was the plaintiff in possession of the 92 beegahs when Government resumed the land, and, on the belief of the proprietary right being vested in the defendant, appellant, entered into temporary engagement with him for the revenue, and thus virtually dispossessed the plaintiff? If he was, he has not explained why he left the aggressive acts of the Government officers and of the defendant, appellant, for several years unresisted.

I am of opinion that the principal sudder ameen has not properly enquired into this fact, which is the real point to be decided, nor are there any papers or evidences with the record that enable this court to come to any satisfactory conclusion. The case must therefore be remanded, and the stamp fees returned to the appellant.

ZILLAH MOORSBEDABAD.

THE 10TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 9 of 1845.

A Regular Appeal from the decision of Moulovee Syed Abdool Wahid, 1st grade Principal Sudder Ameen.

Nud Ulli, Appellant, (Defendant,)

versus

Illahi Begum, Respondent, (Plaintiff.)

Rupees 695.

To prevent the sale of a house in satisfaction of a decree of court.

The plaintiff, respondent, set forth in her plaint that on 13th Poose 1246 she purchased from Kumla Bibee (a defendant in the case) a house for the sum of 575 rupees through Goopee Chowdhree and Baijoo, Kumla Bibee's brother, the money having been advanced by a merchant named Juggomohun Panreh; that the defendant, (appellant,) having a decree against her husband, Afzul Alli, got the house attached; that though the attachment was taken off by order of the sudder ameen, the late judge ordered that the house should be sold in satisfaction of the decree. The plaintiff accordingly sued to prevent the sale of the house.

The defendant, appellant, in defending the suit asserted that the house was the property of Afzul Alli, the respondent's husband.

Kumla Bibee in replying to the suit sided with the plaintiff, (respondent,) and admitted having sold the house.

This case on being before appealed was returned for re-trial. Further enquiry has distinctly proved that the transaction was a *bona fide* purchase by the respondent with money furnished by her father-in-law, who has filed a petition to that effect; that it was made through the agency of Gopee Chowdree and Baijoo Chowdree, Kumla Bibee's brothers, the former of whom has deposed to that effect, and corroborated the evidence of the other witnesses. The principal sudder ameen, considering the case proved and the evidence on the part of the defence unworthy of credit, gave a decision in favor of the respondent, plaintiff, in which judgment I entirely concur.

THE 10TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 13 of 1844.

A Regular Appeal from the decision of Moulovee Syed Abdool Wahid, 1st grade Principal Sudder Ameen.

Rajkiswur Mitter, Pauper, Appellant, (Plaintiff,)

versus

1 Benode Monee, mother, widow of Plaintiff's brother,

2 Prankisto Mitter, minor.

3 Rammonee, plaintiff's mother, and others, Respondents,
(Defendants.)

Rupees 4,088-10 annas.

On account of a joint trade.

PLAINTIFF states that he left home in 1229 for service, leaving his brother, Buool, and his mother, Rammonee, in charge of all domestic arrangements; that on one or two occasions, having reason to believe that all was not going on well, he went home, and had the account explained to him; that on doing so the last time in 1233 the books exhibited an outstanding balance in amount 1,371 9 0 Grain in store, viz. . . .

Rice 1500 maunds

and 700

Fire wood 500, value..... 2,050 0 0

Price of a boat,..... 210 0 0

 3,631 9 0

that on going home in 1239, he was not admitted.

Deduct 6 annas or 6-16ths,

Buool's share, 2,493 0 3

Balance,..... 4,188 0 10

Deduct received,..... 100 0 0

 Amount sued for,..... 4,088 0 10

The defendants in reply to the suit stated that in Cheit 1239 an equal distribution of the property took place, and that the plaintiff gave his brother a receipt in full of all demands, and that a mutual separation ensued.

This suit has a second time come before me, having been returned to the principal sudder ameen for re-trial. The decision of that officer now appears to be quite correct; the defendants, respondents, having fully proved their objections, which are in a great measure established by the evidence adduced on the part of the prosecution. The appellant has sued as a pauper in both stages, and has advanced nothing calculated to impugn the decision of the principal sudder ameen, which is hereby affirmed.

THE 14TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 10 of 1843.

A Regular Appeal from the decision of Moulovee Syed Abdool Wahid, 1st Grade Principal Sudder Ameen.

Thakoor Das Mookerjea, Appellant, (Plaintiff,)

versus

Shama Soondree Debea, Respondent, (Defendant.)

Rupees 536, 9 annas, 15 gundahs, and 3 cowries. Possession of land and mesne profits.

THE plaintiff sets forth in his plaint that, on 24th April 1838, he purchased turuf Bundaipara, subject to payment of 8,014 rupees, 14 annas, 10 pies, and sold for arrears of revenue; that on the civil court proceeding to put him in possession the defendant laid claim to 3 uninhabited villages Jote Sheebtram *alias* Luckheenarainpore, Musseedabad, and Nazirpore, stating that in the year 1244, Chunder Secur Surmah, manager of the idols Luckheenarain and Radabullub, and who in 1192 B. S., had purchased the villages of Durupnarain, then a landholder, for 84 rupees, had assigned them over to her deceased son, Jaikishun, on gift. Plaintiff accordingly filed copy of a statement, showing the quantity of land appertaining to the villages in question, obtained from the collector's office, but that the defendant's right was upheld. The plaintiff proceeds on to state that the statement of lands which was filed in the collector's office by the defendant's husband, Thakoor Das Rae, showed the quantity of each village to be as follows:

Musseedabad,	74 19
Jote Sheebtram,	272 16½
Nazirpoor,	350 16

Beegahs 697 11½

but that defendant held an excess of 500 beegahs in Musseedabad and Nazirpoor belonging to his village Alloallee, and of 250 in Jote Sheebtram, appertaining to plaintiff's village Bagmarra, for which he brought his action, claiming also mesne profits.

The defendant in reply to the suit asserted that the lands appertained to the villages in question, that they paid a separate rent into the collector's office.

Two ameens were consecutively deputed to measure the land in dispute, whose reports agreed with each other. They estimated the land to be 740 13
 of which quantity the principal sudder ameen awarded to plaintiff,..... 472 7

leaving ... 268 6

which in consequence of the proximity of the lands of either party he equally distributed between them, disallowing mesne profits.

With this decision both parties are dissatisfied. The decision of the principal sudder ameen is in my opinion wrong. The land held by the defendant as shewaittee (belonging to idols,) was formerly part and parcel of the estate Bundaiparra of Durpunarain Rae, former landholder. This person had two sons, Hurroppersaud and Thakoor Das, the former of whom in the year 1192 sold to Chunder Seekur Rae, manager of the idols Lukheenarain and Radabullub, the villages Jote Sheebraam or Lukheenarainpoor, Musseedabad, and Nazirpoor, which were assigned over by him in gift in 1244 to the defendant's son, Jaikishen. Thakoor Das Rae, mentioned above, appears to have been the defendant's husband, and in his capacity of landholder filed, in 1201, a rugbubundee or statement of the lands appertaining to the idols, in the collector's office. The late Durpunarain's heirs having become defaulters to Government the estate was sold and purchased by the plaintiff. The dispute existing between the plaintiff and the defendant is as to boundary. The rugbubundy or statement of lands relating to the uninhabited villages in the defendant's occupation is forthcoming, but those of the villages Bagmarra and Alloallee, belonging to the plaintiff, have not been filed, yet the principal sudder ameen in the absence of the latter has decided the case, on the particulars of land filed in the collector's office, awarding 472 b. 7 c. to the plaintiff, and a moiety of the remaining lauds to either party.

The case must be returned to the principal sudder ameen for further enquiry. It will be his duty to make enquiry, and ascertain if any statement exists in the collector's office showing particulars of the lands forming the plaintiff's two villages Bagmarra and Alloallee, and to depute a competent person to define a boundary between the villages of either party respectively.

THE 14TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 11 of 1843.

*A Regular Appeal from the decision of Moulovee Syed Abdool Wahid,
1st grade Principal Sudder Ameen.*

Shama Soondree Debea, Appellant, (Defendant,)

versus

Thakoordas Mookerjea, Respondent, (Plaintiff.)

Rupees 3000. Possession of land and mesne profits.

THIS case is similar to No. 10, decided this day, and, for the reasons therein stated, the appeal is decreed, and the judgment of the principal sudder ameen reversed.

THE 14TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 24 of 1845.

*A Regular Appeal from the decision of Moulovee Syed Abdool Wahid,
1st grade Principal Sudder Ameen.*

Bejaigovind Burrall and Chamoo Dutt, Appellants, (Defendants,)

versus

Shanund Moi, Respondent, (Plaintiff.)

Rupees 1,052. For possession of a house.

THE plaintiff sued to recover possession of a house, purchased by her in the name of Rajiblochun Burrall, at a sale in satisfaction of a decree of court against the defendant Bejaigovind Burrall, stating that the latter, after various attempts to recover possession of the house, contrived to have it attached as the property of her son Kaleedas Dhur, in execution of a decree against him in favor of a person named Rusool Buksh; that after the attachment was taken off he instigated his servant, Chamoo Dutt, to claim the house by purchase from Rajiblochun Burrall; and that possession of it was summarily assigned over to Chamoo Dutt.

The defendant Bejaigovind, in reply to the suit, said that the house was his servant Chamoo Dutt's, who claimed it as his property.

Since the institution of the appeal Chamoo Dutt has withdrawn his claim to the house, admitting that it belongs to the respondent; and as Bejaigovind Burrall who appealed with the view of supporting Chamoo Dutt disclaims all title to the house, I dismiss the appeal with costs, and confirm the decision of the principal sudder ameen in awarding it to the respondent.

THE 14TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 47 of 1846.

A Regular Appeal from the decision of Moulovee Mahomed Mobeen, Moonsiff of Gowas.

Bahadur Mundul, Appellant, (Defendant,)

versus

Burkutoollah *alias* Burroo Mundul, Respondent, (Plaintiff.)

Rupees 26-15-0. On a bond.

THE plaintiff sued to recover the sum of Company's rupees 16 advanced to the defendant on a bond, with interest.

The defendant having neglected to defend the suit, and having in an action brought against the respondent acknowledged the present debt, the moonsiff decreed the case.

The appellant appealed to this court requesting that the case might be returned to the moonsiff, in order that both suits might be tried together. On enquiry from that officer I find that the appellant's suit against the respondent has been amicably adjusted. As I see no reason to interfere with the moonsiff's decision, I affirm the same.

THE 15TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 7 of 1845.

A Regular Appeal from the decision of Moulovee Syud Abdool

Wahid, 1st grade Principal Sudder Ameen.

Kesub Singh and Nundkoomar Singh, Appellants, (Defendants,)

versus

Bankishore Ghose and Radhanath Ghose, 12 annas sharers of estate Bandara, Respondents, (Plaintiffs.)

Rupees 49, 14 annas. To resume land held as rent-free.

THE respondents, plaintiffs, stated that the appellants held 3 ct. 16 gs. of land, for which they formerly paid an annual rent of rupee 1-9-6, but at the instigation of the 4th sharer, Hursoondree Gopteh, they had withheld payment since 1237. The respondents accordingly sued to resume $\frac{3}{4}$ ths of the land, the rent being R. 1 3 9 Eighteen years' value, 21 12 6 Add rent from 1237 to 1247, 13 4 17

The appellants, defendants, in defending the suit asserted that they resided on the land rent-free by permission of Musst. Sonamonee, (a defendant in the suit,) widow of Ramchunder Sing, their deceased brother.

This case was first tried by the sudder ameen, who exceeded his authority in doing so, and on an appeal it was referred to the principal sudder ameen, who, on the report of the collector and evidence

adduced, considered that the land was subject to payment of rent, and passed an order for resumption. That the land is liable to payment of rent, and that up to 1237 rent was paid is indisputably proved. The rent due, though mentioned, is not sued for, and the respondents in instituting the action have proved a right which they possessed previous to its institution. The appeal is dismissed with costs.

THE 15TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 12 of 1846.

A Regular Appeal from the decision of Moulovee Syed Abdool Wahid, 1st Grade Principal Sudder Ameen.

Nubeen Chunder Banerjea and Punchoomonee Debea, Appellants,
(Defendants,)

versus

Punchanun Banerjea, Guardian of Tailakhuh Tarinee, Minor,
Respondent, (Plaintiff.)

Rupees 1,118 and 10 gundahs, price of Jewels.

THE plaintiff set forth that plaintiff, and Musst. Dassee, the defendant, Punchoomonee's mother, were sisters; that Govind Pursad Ghosal, their father, not having any son, bequeathed a moiety of his jewels to each of his daughters; that while plaintiff was absent, his wife, Musst. Kumulmoonee, was taken ill, and that previous to her death, she, on the 11th Assar 1251, made out a list of her cash and her jewels, and those belonging to her idol, which she placed in separate boxes and consigned them to the defendant's care to deliver to the plaintiff on his return home; that on coming home he received the list of the property from his servant, but that the defendants would not restore it. Plaintiff accordingly sued for the value of the same.

Gold ornaments, weighing 20 rupees, 8 annas,			
8 pie, at 16 rupees,	328	8	0
Silver ditto, weighing rs. 482-8, at 13 annas,	392	0	6
Pearls and beads,	21	0	0
Cash,	256	0	0
2 Boxes and keys,	2	4	0
	<hr/>		
	999	12	6
Ornaments belonging to the idol, and value of papers,	118	4	0
	<hr/>		
	1118	0	6

The defendants denied having received the property sued for from the deceased, alleging that on being taken ill she came to Berhampore and occupied her portion of the family residence; that she died on the 6th Assin 1251; and that the defendant, Nubeen Chand, defrayed 4 rupees on account of her funeral expenses; that Prunbundoo Banerjea was aware that she had left her cash and ornaments at her own house, and that in reality she never possessed so much property, and if she had made it over to them it would have been on a written document. The plaintiff filed the list of the property, which has been duly stamped to render it a legal document.

The principal sudder ameen, on the evidence of Muddun Mohun Banerjea who wrote the list of the property, and of Bydnath Rajbungsee, Muddoo Sing, and Hurrekishen Das, and the written reports sent in by Jeetoo, Rumtunnoo, and Kunjoo Chund, native doctors who attended the deceased, decreed the amount sued for with exception of the idol's ornaments, deeming the evidence on the part of the defence unworthy of credit.

There appears to be every reason to believe that the ornaments were made over to the defendants. Their real value however, though their weight is mentioned in the list, has not been proved. This may be estimated by ascertaining from native jewellers the quantity of alloy usually used in making up ornaments of a similar description. The evidence of the native doctors should have been taken on oath, and that of Prunbundoo Banerjea should have been taken for the defence. The investigation of the principal sudder ameen appears to be incomplete. The appeal is consequently decreed, and the case returned for re-trial.

THE 16TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 91 of 1846.

A Regular Appeal from the decision of Moulovee Mahomed Mobeen, Moonsiff of Gowas.

Bullubhee Kant, Appellant, (Defendant,)

versus

Sreekanth Bunal, Respondent, (Plaintiff.)

Rupees 25-11-5 gs. Arrears of rent.

THE respondent sued the appellant for the sum of rupees 18-1-6 gs., rent due, and interest 6 rupees, from 1246 to 1251, on account of a lease of 1 beegah, 13 cottahs of lands, held at an annual rent of

rupees 3-0-3gs., as per a written engagement dated the 2d Bysack 1251. Amount in Sicca rupees. 24 1 6

in Company's rupees 25 11 3

The appellant in defending the suit admitted that the amount of land and the amount of rent demandable were correct, but pleaded that the dispute between him and the respondent had been settled by arbitration, and that 8 rupees which had been found to be due were paid, for which he held a receipt dated the 28th Assar 1252.

The appellant filed a document purporting to be a receipt for the above amount, but on a subpoena being issued could not point out his witnesses, and omitted to pay in the amount required to re-issue the same. The case was consequently decided in the respondent, plaintiff's, favor.

The appellant not having urged any thing calculated to impugn the justness of the moonsiff's decision, I dismiss the appeal with costs.

THE 16TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

CASE No. 161 of 1846.

*A Regular Appeal from the decision of Shekh Ghulam Furrreed,
1st grade Moonsiff of Hururparrah.*

Bunmallee Mundul, Appellant, (Defendant,) .

versus

. Rajiblochun Mundul, Respondent, (Plaintiff.)

Rupees 28-14-2 gs. 8 cts. On account of a bond.

THE plaintiff sued to recover the sum of rupees 23-12, and interest thereon, on a bond executed by the defendant on the 13th Phalagoon 1250 on making up the accounts.

The defendant in replying to the suit said that if the plaintiff's account books could show any balance against him, he was willing to pay the amount, urged that he was absent on a pilgrimage to Gyah from the 11th Phalagoon 1250 to the 21st Choit 1251, and that an enmity had existed between him and the plaintiff as to the observance of caste.

Evidence on the behalf of each party having been taken, the moonsiff decreed the suit in the plaintiff's favor, discrediting the witnesses for the defence.

I find that the proof to the execution of the document on which the suit has been brought is incomplete, the evidence of the writer of the same not having been taken, and only one of the witnesses

examined being able to read and write. I accordingly return the case for re-trial. The amount of the stamp on which the appeal has been drawn out to be returned to appellant.

THE 16TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 162 of 1846.

A Regular Appeal from the decision of Mudun Mohun Chowdry, late Moonsiff of Kandhee.

Juggurnath Mundul, Appellant, (Defendant,)

versus

Sheebdyal Das, Respondent, (Plaintiff.)

Rupees 74-10-13 gs. 2 cts. On account of a deed of instalment.

THE plaintiff sued the defendant for balance of amount due on a deed of instalment, having previously obtained a decree for the two first instalments.

The defendant in defending the suit admitted having executed the document, but asserted full satisfaction of the demand in cash and in produce.

The moonsiff, considering the demands just in the absence of proof of adjustment, gave a decree in plaintiff's favor, in which judgment I concur. The appeal is dismissed with costs.

THE 16TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 193 of 1846.

A Regular Appeal from the decision of Mr. H. S. Thompson, late 1st grade Moonsiff of Jungypore.

Koran Mundul, Appellant, (Defendant,)

versus

Bhinkoo Biswas, Respondent, (Plaintiff.)

Rupees 43-12-0. On account of an instalment.

THE respondent sued the appellant for a sum due on a deed of instalment, executed on adjustment of accounts.

The defendant, in reply to the suit, stated that the plaintiff's father and his father had mercantile dealings with each other, and the latter, being indebted to the former, assigned over to him 6 b. 15 ct. of land, the annual rent of which was rupees 14-12 as., that subsequently another arrangement was entered into under which plaintiff retained the land. The defendant denied the execu-

tion of the deed on which the action was brought, and asserted that the real document was drawn out on plain paper; the plaintiff promising at the time to credit the defendant with the rent due, and deduct the same from the amount of the instalment deed.

The deed of instalment having been duly proved, and the assignment of the land being proved to have been on account of another transaction distinct from the present case, the moonsiff decided the suit in the plaintiff's favor. Concurring in his judgment, I dismiss the appeal with costs.

THE 16TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 214 of 1846.

A Regular Appeal from the decision of Baboo Petumber Mookerjee, Moonsiff of Zeeagunge.

Gholab Khulifa, Appellant, (Defendant,)

versus

Govind Das Mohunt, Respondent, (Plaintiff.)

Rupees 63-5-0. On a bond.

THE plaintiff sued the defendant to recover the sum of rupees 48, lent on a bond, with interest.

The defendant, although duly served with the notice of the lower court, gave no reply to the suit. The bond having been duly proved by the evidence adduced and by the writer of the same, the moonsiff decided the case in plaintiff's favor, in which decision I concur.

The appeal is dismissed with costs.

THE 18TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 175 of 1846.

A Regular Appeal from the decision of Mr. H. S. Thompson, late 1st grade Moonsiff of Jungypore.

Soopul Shaha, Appellant, (Plaintiff,)

versus

Sunkoree Sahin, Respondent, (Defendant.)

Rupees 6-12. On account of wages.

THE plaintiff stated that the defendant's husband had engaged him in Bysack 1250, as a servant, on a salary of 12 annas per

mensem and clothing; that on the demise of her husband the defendant made an account of what was due to the plaintiff, which amounted to 15 rupees, and retained him in her service from the month of Bhadur to Poose 1252; that for the latter period the plaintiff's wages were 3 rupees, 12 annas, making with the former balance, 18 12 0
 Deduct paid, 12 0 0

Balance due, 6 12 0

The defendant in reply to the action asserted that in addition to the amount acknowledged to have been received, she had, in money and by furnishing the plaintiff with materials for building a house, paid more than the balance sued for. The moonsiff, considering the objections raised against the demand duly proved, dismissed the suit, and as I see nothing calculated to impugn the judgment of that officer, I confirm the same, and dismiss the appeal with costs.

THE 18TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 200 of 1846.

A Regular Appeal from the decision of Moulovee Mahomed Mobeen, Moonsiff of Gowas.

Kishore Shah, Appellant, (Defendant,)

versus

Sartuk Shah, Respondent, (Plaintiff.)

Rupees 11-1-0. On account of jewels.

THE plaintiff sued to recover the value of some jewels, made over to the defendant in anticipation of the marriage of his younger brother with defendant's daughter, who was subsequently married to another party.

The defendant urged that the value of the jewels was only 4 rupees, 6 annas, and that they had been duly returned; that plaintiff owed him 13 rupees, 9 annas, for oil, and had instituted the suit to annoy him.

As the defendant did not comply with the requisitions of the court, the moonsiff decreed the case in the plaintiff's favor. I see no reason to interfere with this judgment, and dismiss the appeal with costs.

THE 19TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 109 of 1846.

A Regular Appeal from the decision of Moulvee Mahomed Mobeen, Moonsiff of Gowas.

Neelkunth Sircar, Appellant, (Plaintiff,)

versus

Nukee Mohaldar and Nubee Shekh, Respondents, (Defendants.)

Rupees 47 0 a. 8 g. Bond.

PLAINTIFF sued to recover rupees 47, 0 a. 8 g. due on a bond. The defendant, Nukee, in defending the suit denied the demand *in toto*, stating that as the plaintiff and his father lived conjointly, the bond would have been drawn out in favour of both; that plaintiff and his father had previously sued them for debt and obtained a decree on his father's estate, but as it did not affect their persons this suit has been maliciously instituted.

From the circumstance of the father being alive and living with his son, and as the plaintiff had failed to attend as desired by the defendant, and assert the justness of his demand "viva voce," the moonsiff, bearing in mind the other case alluded to, deemed the present suit malicious, and dismissed it.

Whatever may be the merits of the case, it was clearly the moonsiff's duty to have taken the evidence of the witnesses to the bond, which has not been done. The case is accordingly returned for retrial. The appellant will receive back the amount of the stamp on which the appeal is engrossed.

THE 19TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 159 of 1846.

A Regular Appeal from the decision of Moulvee Mahomed Mobeen, Moonsiff of Gowas.

Choto Ram Lal Das, Appellant, (Defendant,)

versus

Gungagovind Odhikaree, Respondent, (Plaintiff.)

Rupees 27, 15 a. 7 g. Balance of account.

THE plaintiff set forth in his plaint that he had advanced the defendant money on account of silk piece goods, and that on the 9th Sawun 1252, the defendant came and cast up his account, which proved to be rupees 26-10-0, for which he promised to deliver in silk piece goods in the course of a month; that the defendant had only paid 4 as. in mulberry leaves, making the balance, 26 6 0

Interest, 1 9 7

 27 15 7

The defendant in his reply to the suit asserted that he had delivered silk pieces to the full amount, stating that the plaintiff's brother had sued his (defendant's) mother in the civil court for a debt, but not being able to prove his demand, that the plaintiff had brought this action through spite.

The defendant not having been able to prove his statement, and the demand appearing from the evidence to be just, the moonsiff decreed the case, in which I concur.

THE 19TH DECEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 190 of 1846.

*A Regular Appeal from the decision of Baboo Dwarkanath Roy,
1st grade Moonsiff of Lalbaugh.*

Bydnath Mundul, Appellant, (Plaintiff,)

versus

Rammonee Ghoshannee and Birmomoe Ghoshannee, Respondents,
(Defendants.)

• Rupees 31-7. Bond.

THE plaintiff sued the defendant for balance of a debt due on a bond for rupees 31-4-0, dated the 23d Sraon 1245:

Principal,.....	31	4	0
Interest,.....	24	7	0
	<hr/>		
	55	11	0
Paid,.....	24	4	0
	<hr/>		
Balance,.....	31	7	0

The defendants denied the debt *in toto*, urging that Rammonee was ill in another village on the date of the bond; that the suit had been maliciously instituted in consequence of their having complained against the plaintiff in the magistrate's court for taking away a cow.*

The paper on which the bond is executed appearing to be old, the writer of the document being dead, and the other witnesses unable to read or write, and no particulars of interest paid being given, the moonsiff dismissed the suit; and seeing no reason to interfere with his decision, I dismiss the appeal with costs.

ZILLAH PATNA.

THE 5TH DECEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE..

No. 83 of 1845.

Regular Appeal from a decision passed by the Additional Principal Sudder Ameen, Mahomed Ibrahim Khan, under date 16th December 1845.

Phagoo Lall, (Plaintiff,) Appellant,

versus

Gopee Lall, Birjmohun Lall, Chootoo Lall, and Munnor Lall,
(Defendants,) Respondents.

To recover the sum of Company's rupees 1352-3-8-16, principal and interest, balance of accounts for spiceries for the years 1897 to 1899 (Sumbut) inclusive.

The appellant sued the respondents in the lower court for the sum of 1352-3-8-16, principal and interest, balance of account, for spiceries for the years 1897 to 1899 (Sumbut) inclusive. The proof adduced by him was an abstract in the muhajim character, with translation, giving the items of eight payments (the amount principal now sued for) made by appellant to respondents, without date or year, but with a reference on it to the pages of other books, and the evidence of witnesses to the fact of respondents having admitted the debt. The respondents state that they have had transactions with the appellant for longer than the period stated by him, viz. from 1896 to 1901 Sumbut: they put in their accounts for this period, which shew that no balance is exhibited, and their witnesses prove that the accounts between the parties were adjusted and closed. The point at issue turned on the correctness of the accounts which both parties were called on to produce. They were examined by the (Baheedan) person appointed for that purpose by the court, who reported in favor of the respondents. They were subsequently made over to 3 muhajims, who recorded that the accounts of the appellant were irregular, and those filed by the respondents correct. The 2d principal sudder ameen dismissed the suit. The chief pleas in appeal are the validity of the proofs adduced by appellant, and that the decision of the lower court is opposed to the precedent, laid down in the case cited in the margin.* On the first point, with the statements of the qualified people who have examined the accounts before me, I have no hesitation in rejecting the proofs of the appellant: the second plea does not apply, it is the business of the plaintiff in the first instance to prove his claim, and

*Dewanny Reports, vol. II. page 271, Bunseedhur Nundee, Appellant,

versus

Mirza Moohumud Shureef, Respondent.

failing that the alternative is dismissal. It is therefore ordered that the appeal be dismissed with costs, and the order of the 2d principal sudder ameen, dated 16th December 1845, be confirmed.

THE 7TH DECEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 3 of 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen, Mr. E. D'Costa, under date 31st December 1845.

Moulvy Owlea Ally, Moost. Abida and Moost. Wajeeda, wives of Hakeem Uhmud Ally, (Defendants,) Appellants,
versus

Raja Bhoop Singh, (Plaintiff,) Respondent.

To recover possession of three villages, viz. mouzahs Chainpore, Sheikhpore, and Burhumpore, pergunnah Hawalee Azeemabad, leased by respondent to appellants from 1250 to 1258.

The respondent, (plaintiff,) sued the appellants, (defendants,) in the principal sudder ameen's court for the possession of three villages leased by him to the appellants, from 1250 to 1258, on a consideration of 5000 Sicca rupees, the terms of the agreement being that the lease should terminate at the end of 1258, or at the expiration of any intermediate year on which the respondent might think proper to repay the sum advanced. The amount was deposited by him in court. The transaction is admitted by the appellants, but they state the lease was terminable only at its period in 1258, and not intermediately. The counterpart of the lease written by appellants is filed, and bears out fully the statement of the respondent that the lease was terminable at the end of any year on the repayment of the sum advanced, it is formally executed, duly registered, and proved by witnesses. To set aside this clause, the appellants file a letter from the respondent saying such an insertion had been made through the intrigues of his dependants, that the lease was not terminable intermediately, but that even on the repayment of the money advanced on the final year, the respondent would not disturb their possession, which should remain during his life. This letter does not bear the seal of the respondent, but merely the initials B S in English. It is entirely denied by the respondent. The principal sudder ameen considering the genuineness of this letter extremely doubtful, while the appellants in substance admitted the facts of the original transaction as stated by the respondents, decreed the suit. The plea in appeal is the authenticity and genuineness of the letter of the respondent. I entirely concur in opinion with the principal sudder ameen that it cannot be received with any faith. It is the duty of the courts to view with extreme suspicion supplementary proofs of this kind, setting aside, as it would, engagements entered into with

all the legal and requisite formalities, and it also contains the fault so common to evidence of this kind, it proves too much; why should respondent have agreed to lease the land to appellants after repaying the money advanced on the expiration of the term? It is therefore ordered, that the appeal be dismissed with costs, and the decree of the principal sudder ameen be confirmed.

THE 9TH DECEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 1 of 1845.

Original Suit.

Moulvee Owlea Ali, Moost. Wajideh and Moost. Abideh, Plaintiffs,
versus

Rajah Bhoop Singh, Defendant.

To recover the sum of Company's rupees 378-9-6, amount of interest on an advance of Sicca rupees 5000, or Company's rupees 5,333-5-4, from 27th Magh to the end of Bhado 1249 F. S.

In consequence of the case between these parties, No. 3 being in appeal before this court, this suit, at the request of the plaintiffs, on being instituted was directed by the judge to remain on his file for investigation. The transaction originates in the one decided by this court on the 7th December 1846. It is for interest on Sicca rupees 5000, the amount advanced from 27th Magh to the end of Bhado 1249 F. S., that is, from the date of the payment to the date of possession. The defendant states that this claim is in direct contradiction to the terms of the deed, which states that the transaction is not to be charged with interest. The plaintiffs bring witnesses to prove that defendant admitted he would pay interest. The defendant files the counterpart of the lease, signed by the plaintiffs, in which it is distinctly recorded that the money is advanced and no interest is chargeable. Having no doubt of the validity of the latter document, I consider the claim of the plaintiffs untenable, and dismiss the suit with costs.

THE 9TH DECEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 2 of 1845.

Original Suit.

Moulvee Owlea Ali, Plaintiff,

versus

Rajah Bhoop Singh, Defendant.

To recover Company's rupees 405-0-0, amount of expenses incurred, connected with settlements of certain villages, viz. mouzah Sheikhpooa, &c.

The remarks in case No. 1, as regards the suit being retained on the judge's file, applies to this number. The plaintiff sues the

defendant under an (tunkhanameh) assignment for the sum of 400 rupees, dated 7th Assar 1249, which amount had been expended by the plaintiff, at the request of the defendant, connected with the settlement proceedings of the lands of the defendant. The assignment is filed and proved by witnesses, and bears the seal of the defendant. The defendant denies the genuineness of this assignment, but admits he gave one of the same amount for the purpose specified by plaintiff, but that it was to be paid from the balances of 1249, which had been so collected by plaintiff. Defendant brings 2 witnesses in proof of this assertion, but they merely state an assignment having been given and the money collected. I consider it however quite insufficient to invalidate this specific claim of the plaintiffs with the proof he has adduced to substantiate it. It is therefore ordered, that a decree be passed for the plaintiffs for 400 rupees, with costs and interest.

THE 11TH DECEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 4 of 1845.

Original Suit.

Moost. Abideh and Moost. Wajideh, Plaintiffs,

versus

Rajah Bhoop Singh, Defendant.

To recover the sum of Company's rupees 129, amount of an assignment (tunkhanameh.)

The remarks in case No. 1, as regards the suit being retained on the judge's file, apply to this number. The plaintiffs sue the defendant for an assignment granted by him for expenses connected with the settlement of the lands of the defendant. The plaintiffs do not file the original tunkhanameh, but say it has been lost; that it was filed in the case No. 3, when the suit was in appeal: plaintiffs took the original to have the proper stamp affixed, they refer to the copy which remained with the appeal case. Plaintiffs bring two witnesses, but their evidence is merely general and not satisfactory. The defendant denies the assignment, and states that plaintiffs' statement is in itself inconsistent, he having by his own account expended part of the money for a mokhtear at a period antecedent to the transaction between them. The original assignment not being forthcoming, and the evidence of the witnesses not having satisfactorily established the facts of the case, I dismiss the suit with costs.

ZILLAH PURNEAH.

THE 18TH DECEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 6 of 1846.

Sudder Ameen, Izzut Ali.

Sheikh Bhola and others, (Defendants,) Appellants,

versus

Doolar Jha, (Plaintiff,) Respondent.

Mirza Ashkuree and Bama Churn, vakeels for Appellants.

Seetul Chund Rai, vakeel for Respondent.

THIS action was brought by the respondent, to recover possession and mesne profits, because of his ejectment by appellants from 445 beegahs of pasturage; being laid at 774 rupees, 8 annas. The plaint sets forth, that the right of grazing the said lands had been enjoyed by plaintiff from time immemorial, at a rent of 25 rupees, as fixed by decree of the moonsiff, and paid up to 1249; that in 1243, he was ousted from 239 beegahs, in one village, by three of the defendants, farmers from 1240 to 1244, and their surety; and in 1249, from 206 beegahs in another, by the co-defendants, lessees from 1249, and parties holding of them; whom he now jointly sues, with the proprietors, and surburakar during estate's sequestration.

In reply it is urged, that the claim thus made, formed distinct grounds of action, and that the valuation of his interest by plaintiff, at threefold the amount of rent, is illegal;—the lessees under the first lease, pleading not guilty,—those under the last, that plaintiff being in arrears, and not attending to enter into engagements, the lands were let to another.

The sudder ameen finds plaintiff's ejectment in 1243, established by evidence of witnesses; and that in 1249, by admission of the parties; while payment of rent by plaintiff for that year, is proved by charchittee, filed in a separate suit; verdict being given against the farmers, sureties, and under tenants; the proprietors and surburakar being relieved.

Who now appealing under separate numbers, it is urged by the lessees in 1243, that the plaintiff's allegation is disproved by the ameen's local investigation, in which no such trespass is found to have been committed. The appellants, lessces in 1249, pleading in justification, as before.

JUDGMENT.

The respondent would establish his ejectment in 1243, from certain of the lands here included, and in 1249, from the remainder, as said yet to continue in both, here pleading, that additional evidence as respects the former would be obtained from the records of the criminal court; but this he has failed to produce; while the local enquiry, as alleged by the appellant, goes to disprove it. It further appears that, on expiration of the above lease in 1245, the respondent himself became the lessee, in the name of his servant, as whose surety he appears; but in consequence of his falling into arrears in 1247, it was taken into khass collection by the surburakar, until relet to the co-defendant in 1249. If dispossessed during this interval, therefore, it must have been by his own act. The charchittee produced by whom, as that of the co-defendant, to establish payment of rent in that year, though repudiated by the latter, is no less conclusive in proof of respondent's possession, his crop, thus said to be attached, being thereby released. Having thus wholly failed to establish the facts asserted in his plaint, it is unnecessary to consider the legal objections here raised, to the union of actions so distinct. The decision of the sudder ameen is therefore reversed, and a decree given in favour of the appellants, under this, and the following number, with all costs in both courts.

THE 18TH DECEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 8 of 1846.

Sudder Ameen, Izzut Ali.

Bodyanund Jha and others, (Defendants,) Appellants,

versus

Doolar Jha, (Plaintiff,) Respondent.

THIS is a separate appeal, preferred by parties in No. 6 preceding. To the decision in which reference is here made.

THE 19TH DECEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

No. 2 of 1846.

Messrs. Fletcher, Alexander & Co., Plaintiffs,

versus

Ranee Soorut Jehan and others, Defendants.

Seetul Chund Rai and Bama Churn, vakeels for Plaintiffs.

Feizoolah and Furzund Ali, vakeels for Defendants.

THIS is an action brought by the plaintiffs, against the widow and heirs of Syed Hossen Riza, joint proprietor of purgunnah

Soorjapore, deceased, for recovery of amount expended in conducting proceedings in an appeal before the Privy Council, with that charged as commission ; together laid at rupees 21,133.

The plaint sets forth, that, under power of attorney granted by the deceased, in names of the plaintiffs, partners in the said firm, on revival of the appeal of the heirs of Raja Deedar Hossein, before the King in Council, the suit having been brought to a termination, there remained due to the plaintiffs, in account current, on the 31st December 1843, for sums expended, £1299-6-3, and for agency in the same, a consolidated sum of £500; in all £1799-6-3, or rupees 19,628; now amounting with interest from the 1st January to the 15th December 1845, to rupees 21,133. That the deceased in his lifetime admitted this claim, as has been done by his son, the defendant, Mahomed Riza, since his decease; as established by exhibits, which they produce.

The widow, Soorut Jehan, with the sons of the deceased, Mahomed Riza and Ahmed Riza, do not reply; Kuneez Fatima, the daughter, in her answer praying to be relieved, as not being in possession. The same plea is brought by her husband Meerun, the last of the co-defendants.

In support of their demand, the parties furnish vouchers to sustain the several entries in their account current, and for the charge of such sum as agency, replies from two leading houses in London, in the India trade, to the plaintiffs' query, put to ascertain the amount they were in the habit of charging on similar occasions; thus declared to be, at a rate varying from $2\frac{1}{2}$ per cent. to 5 per cent., according to circumstances. There are likewise produced original letters from the deceased, and the defendant, Mahomed Riza, admitting their liability on this account.

JUDGMENT.

It only remains, on these proofs, to give a verdict *ex parte*, in favour of the plaintiffs, against the widow Soorut Jehan, the sons Mahomed Riza and Ahmed Riza; and the defendant, Meerun; Kuneez Fatima having since deceased, and the plaintiffs now praying that she be relieved, and her name excluded.

THE 19TH DECEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

No. 5 of 1846.

E. Garstin, (Plaintiff,)

versus

Ranee Soorut Jehan, and others, (Defendants.)

Sectul Chund Rai and Gopee Mohun, vakeels for Plaintiff.

Feizoolah and Bama Churn, vakeels for Defendants.

THE plaintiff in this action, executor of the late J. C. C. Sutherland, sues to recover the sum of 44,000 rupees, from the heirs of

the late Hussun Riza, on an agreement given by the deceased, on the 5th Sawun 1248, corresponding with the 19th of July 1841, to the effect, that, in the event of the said J. C. C. Sutherland bringing to a successful issue the appeal then before the Privy Council, for a moiety of pergunnah Soorjapore, to which the deceased was a party, as also two suits pending before the Court of Sudder Dewanny, for a quarter share in the real and personal property in the same, he would be entitled to receive as remuneration for his services, the sum of rupees 44,000, from the above Hussun Riza, or his heirs. In support of which claim, there are brought the original agreement, copies of the decretal orders in the suits referred to, a letter from the deceased, Hussun Riza, admitting his liability, with the evidence of Mr. G. Drummond, in whose presence the defendant, Ahmed Riza, made the like admission, to the plaintiff, Lieutenant Colonel Garstin, and promised to make good the amount on realization of certain malikanah funds, in deposit on his account in the collector's office. Of the defendants, the widow, Soorut Jehan, with the sons of the deceased, Mahomed Riza and Ahmed Riza, do not reply; Kuneez Fatima, the daughter, in her answer, praying to be relieved, as not being in possession; the same plea is brought by her husband Meerun, the last of the co-defendants.

JUDGMENT.

There is no objection raised to the justice of this demand, which the exhibits satisfactorily establish; the principal defendants allowing the suit to go by default; on which grounds, and with reference to the precedent furnished at page 222, vol. VI., Reports of Sudder Dewanny Adawlut, judgment is now passed, *ex parte*, against the parties not replying, with the co-defendant Meerun; Kuneez Fatima being relieved, on plaintiff's application, as in No. 2, above decided.

THE 19TH DECEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

No. 19 of 1846.

Indur Chund, (Plaintiff,)

versus

Nub Comar Seyth and others, (Defendants.)

Seetul Chund Rai and Gopee Mohun, vakeels for Plaintiff.

Feizoolah and Bama Churn, vakeels for Defendants.

THIS is an action to recover amount due to plaintiff, a banker, for sum advanced defendants in account current, between the 23d Chyte 1902 Sumbut, and 20th Asar 1903; the balance on this date at the debit of the latter, being rupees 2610-12-6, or after credit

of rupees 4, since received, rupees 2606-12-6; a hoondie, it is added, received in part payment of this sum, for rupees 971-7-3, having been dishonoured, as now produced, with account current duly attested.

The defendants, partners in another house, do not reply; the gomashteh, included in the action, merely putting in a petition, setting forth the inutility of proceeding against him, his principals having alienated the whole of their property, and absconded.

JUDGMENT.

The claim being duly proved, it only remains to give judgment against all the defendants here included.

THE 19TH DECEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 278 of 1845.

Moonsiff of Kishengunge, Mr. Noney.

Sheikh Haroo and others, (Defendants,) Appellants,

versus

Sheikh Deanutooleh, (Plaintiff,) Respondent.

Mirza Ashkuree and Feizooleh, vakeels for Appellants.

THIS was an action of ejectment, and for recovery of mesne proceeds, laid at rupees 87. The appellant pleading his title to the lands in dispute, as duly conveyed to him under a deed of sale, by the late brother of the respondent; who in reply repudiates the deed, which not being registered is rejected by the moonsiff.

The appeal was first heard by the additional principal sudder ameen, on whose transfer to another district, the case was recalled. In a proceeding of whose court it is recorded, that the stamp on the deed of sale, on which the case hinges, being illegible, it is postponed pending a reference to the collector.

JUDGMENT.

The said stamp being now examined, it is found of value much in excess of the claim here brought, and the deed being duly verified, the omission to register the same, the vendor's title being no where impugned, is not deemed sufficient to invalidate it.

The moonsiff's decision is therefore reversed, and a decree given for the appellant.

ZILLAH RAJSHAHYE.

THE 4TH DECEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 23 of 1846.

Appeal from the decision of the Moonsiff of Bograh.

Kally Sunker Chuckerbuttee, (Plaintiff,) Appellant,

versus

Rubeca Paramanick, (Defendant,) Respondent.

THE appellant sued to recover 38 rupees, lent to the respondent on bond, on the 25th Maug 1250 B. S., waiving his claim to interest, as that stipulated in the bond was in excess of what could be legally demanded. The defendant admitted the bond, but pleaded it was given in lieu of another for 25 rupees, together with interest thereon, and 6 rupees *durta* or a *bonus* paid in advance for the accommodation. To this the plaintiff rejoined that the present bond had nothing to do with the former one, which he still held, and could produce. The moonsiff did not credit the evidence of the two witnesses brought forward by the plaintiff in support of his claim, as two others, also attesting witnesses to the bond, whom the plaintiff declined examining, deposed that they (Mujnool and Motee Nussoul) were not present when the bond was given by the defendant, and holding it proved that the advance was equivalent to interest paid in advance, he (the moonsiff) dismissed the claim under Section 9, Regulation XV. of 1793. Against this decision the plaintiff has appealed, setting forth in his grounds of appeal that his witnesses had proved the loan, and as the defendant admitted the bond, and he (appellant) had not claimed interest, he was entitled to the principal due to him under the bond. To a question put to him, the vakeel of the appellant stated that the reason his client had not sued for the other bond was because *this* was of the largest amount. The appeal was admitted with reference to the admission by the defendant of the bond, and to examine the other, and exhibits in the case.

It would appear that the interest stipulated to be paid in the bond is 3 *gundahs*, 1 *cowree per rupee per mensem*. This is in excess of the legal interest (12 per cent. per annum) demandable for money lent. In the other bond for 25 rupees there was the same rate of interest, but there were two borrowers, the respondent, and

a person by name Shumeet Ullah, the transaction may therefore
 * Sree Kishen Sahee and others, (Appellants,) have been distinct, but, adverting to the decision of the Sudder Dewanny, noted in the margin,* the respondent's admission will not avail the appellant, as under Section 9, Regulation XV. 1793, "where a greater interest than 12 per cent. shall have been received or *stipulated to be received*, the courts are not to give any other judgment, but for the dismissal of the suit, with costs to be paid by the plaintiff." The decision of the moonsiff therefore cannot be disturbed, and the appeal is dismissed with costs.

THE 4TH DECEMBER 1846. *

PRESENT: G. C. CHEAP, JUDGE.

No. 27 of 1846.

Appeal from the decision of the Moonsiff of Bograh.

Kenna Paramanick, (Defendant,) Appellant,

versus

Baharoo Paramanick, (Plaintiff,) Respondent.

THIS was a suit to recover 4 rupees damages on account of a trespass by the cow of the defendant on the plaintiff's cotton field, and the moonsiff gave the plaintiff a decree for 2 rupees, with all costs of suit. Against this decision the defendant appealed, alleging that the suit was malicious, that if his cow trespassed on the field, why did not the respondent take her to the thannah? or the foudjarry court at Bograh? that the moonsiff gave the plaintiff a decree for only 2 rupees, or half the damages sought, but still saddled him (appellant) with all the costs amounting to rupees 6-10-7½; that among these costs his three witnesses' diet money was set down at 6 annas, and at which rate the respondent's four witnesses were only entitled to 8 annas, but they were charged at rupees 2-10. Adverting to this great difference in the amount the case was returned to the moonsiff to furnish an explanation. This he has done, and it would appear that the plaintiff had seven witnesses examined, that owing to the delay in taking their examinations for 4 days' diet had not been charged to the defendant, and that for the remainder of the time they had only been charged at the same rate as the defendant's witnesses, or one anna per diem or for four days rupees 2-10. The moonsiff also added that though only 2 rupees had been decreed, the costs for stamps and vakeel's fees would have been the same if the plaintiff had only sued for 2 rupees. Adverting to this explanation and the circumstances of the case, I see no reason for disturbing the moonsiff's order, and therefore dismiss the appeal.

THE 4TH DECEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 38 of 1846.

Appeal from the decision of the Moonsiff of Dhoobulhuttee.

Azcem Surdar, (Defendant,) Appellant, .

versus

Gorachand Ghose, (Plaintiff,) Respondent.

THE respondent sued the appellant to recover rupees 296-1, being principal and interest of a bond (less 50 rupees paid) for 200 rupees, alleged to have been given by the appellant on the 13th Cheyt 1244 B. S. The suit was instituted on the 2d December 1845, and the defendant having failed to produce proof of enmity between him and a person by name Ishur Chunder Chowdree, who he asserted was the person who sued *benamee*, or under a fictitious name, the moonsiff gave the plaintiff a decree on the 29th January 1846.

The grounds of the appeal were, that the moonsiff had only allowed him (appellant) five days to file the proof; that as he had to get copies of proceedings from the foudjarry court at Bograh it was impossible for him to obtain them between the 23d and the 29th January. The appeal was admitted with reference to this plea, and the respondent's vakeel states that his client, who has since died, denied having sued before the moonsiff of Dhoobulhuttee and knew nothing of the suit. Under these circumstances the case is sent back to the moonsiff of Bograh, who will serve a notice for the attendance of the heirs of the plaintiff, deceased, and decide the case on its merits, calling upon the plaintiff's heirs, if they come forward, for proof of the payments endorsed on the bond. The value of the stamp on which the petition of appeal is written to be returned to the appellant, and the usual order passed as regards costs.

THE 5TH DECEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 39 of 1846.

Appeal from the decision of the Moonsiff of Bograh.

Puncha Hucka and Naloo Paramanick, (Defendants,) Appellants,

versus

Gureeboollah Paramanick, (Plaintiff,) Respondent.

THE respondent sued the appellants to recover rupees 33-9-7, being principal and interest of a bond for 24 rupees, alleged to have been given by the appellants on the 16th Bysack 1249 B. S. The defendants, first, denied having borrowed any thing of the plaintiff; second, that as he received only rupees 1-8 wages per mensem he could not lend such a sum; third, that the suit was *benamee*, or fictitious, and malicious, and brought by Bhowanny Churn Shah,

and Nocowree Dassea, because their (defendants') zemindar had sued certain ryots for rent, and that there was another suit pending before the moonsiff in which he had been made a defendant by the same parties. The appeal was admitted, and the moonsiff called on to report what was the result of the other suit. From his report it would appear it was decreed in favor of the plaintiff, but that two recusant witnesses, named by the defendants, and who would not appear, had been fined, one 20 and the other 40 rupees. Under these circumstances, I see no reason for disturbing the moonsiff's decision in this case, and therefore dismiss the appeal with costs.

THE 5TH DECEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 46 of 1846.

Appeal from the decision of the Moonsiff of Dhoobulhuttee.

Dulleel Mahomud Surkar, Kokaram Mehtur, and Tuggoe Khooloo,
(Defendants,) Appellants,

versus

Munroop Roy Duffadar, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 260-5-2, being principal and interest of a bond alleged to have been given by the appellants on the 4th Sawoon 1245 B. S. The plaintiff admitted the payment of 27 rupees; and the defendants not appearing on the 9th February 1846, an order was passed by the moonsiff that the case should be tried *ex parte*, and it was so decided in favor of the respondent on the 23d February following.

The grounds of appeal are, that the respondent knew nothing of the appellants, nor had they borrowed any money of him. That there was a dispute between their zemindar, (Ishur Chunder Pakrasee) and the respondent's (Rajah Beeressor Roy,) regarding ryots who had left the latter's zemindaree and gone to the Pakrasee's. That when this suit was pending at Dhoobulhuttee, a person by name Benga, on the part of the respondent, complained against the appellants in the foudarry court of Bograh, accusing them of resistance of the process of the civil court and a breach of the peace, and they were in consequence kept in ignorance of the proceedings in the moonsiff's court.

The appeal was admitted to examine the foudarry nuthee, from which it would appear the complaint of Benga was lodged on the 5th February against the appellants in this case, and they were summoned on the 18th, they appeared on the 10th of March, and on the 11th the case was dismissed by the joint magistrate. The moonsiff's *istehar* or proclamation in the case was issued on the 29th January 1846, *ergo* the period for the attendance of the defendants (fifteen days) had not expired on the 9th February, and it would seem on the 13th, Koka, one of the defendants, was called upon to file an answer in seven days.

Under all these circumstances, I do not think the defendants were allowed sufficient time to defend the suit, and were also prevented doing so by the cross complaint in the joint magistrate's court. The case is therefore sent back for re-investigation by the moonsiff of Bograh, who will decide it on its merits, and who will return the foudarry nuthee to the joint magistrate when he has disposed of the case. The value of the stamp on which the petition of appeal is written to be returned to the appellants, and the usual orders as to costs.

THE 7TH DECEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 67 of 1846.

Appeal from the decision of the Moonsiff of Kheytooparra.

Rufick Kuloo and another, (Defendants,) Appellants,

versus

Mr. Rice, (Plaintiff,) Respondent.

THE respondent sued appellants to recover damages for a trespass committed on 6 *beegahs* of indigo which they wilfully destroyed with their cattle, assaulting a *takazgeer* who had been placed to protect it. The damages claimed were the value of the indigo which the plant when manufactured would have yielded, i. e. 96 bundles of plant yielding 24 seers, and which at 160 rupees a *maund* would have been worth 96 rupees.

The moonsiff, after appointing an ameen to make a local enquiry and examining witnesses to the claim, gave the plaintiff a decree for the damages as laid, with costs.

The grounds of the appellants' appeal are that there have been several disputes and cases between them and the respondent both in the foudarry and deputy collector's court at Pubna; that these cases had not been examined by the moonsiff, and that the ameen's report was a partial one, and that there were great discrepancies in the evidence as to the quantity of land cultivated with indigo, and alleged to have been destroyed.

The appeal was admitted on the 24th August last, and the nuthees referred to having been called for and examined, it would appear that both the cases in the foudarry went against the appellants; that the one for rent instituted by the respondent, was dismissed by the moonsiff, and whose decision was affirmed in appeal by me on the 3d December 1844, but how that affects the present case I cannot find. Seeing therefore no reason for disturbing the moonsiff's decision, I dismiss the appeal, with costs payable by the appellants.

ZILLAH RUNGPORE.

THE 5TH DECEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 5 of 1845.

Appeal from the decision of Mr. Thomas, Acting Sudder Ameen.

Muharajah Juggodindro Bunwaree Lall Bahadur, and others,
(Defendants,) Appellants,

versus

Birjosoonder Biswas, (Plaintiff,) Respondent.

THE plaintiff brought this action for the recovery of possession of thirty-six beegahs and a half of land, partly alluvial and partly attaching to his permanently assessed estate, situated in mouzah Balua, pergunnah Khamar, mehal lot Sheebpore, of which he had been dispossessed by the defendants since 1248 B. S., laying his suit, including wasilat, at rupees 328-8.

The defendants allege in answer that they never dispossessed the plaintiff of the lands asserted, that they had been cultivated by their ryots, and when the crops were ripe, the plaintiff's people came to cut them, which having been resisted by their people, the plaintiff withdrew and filed his plaint of dispossession, and laying claim to the lands, as described by him. Defendants state that the lands in dispute attach to the village of Puchooa in their estate of pergunnah Poladossee.

As it appears that the sudder ameen decreed the suit for thirty-one beegahs and a half, with wasilat from the end of 1249 B. S. to the date of recovery of possession, merely on the report of the local ameen of the 21st February 1845, without having called for any evidence in support or refutation of the plaint preferred, not even to verify the ameen's report above stated, a decision founded on such insufficient enquiry cannot but be considered imperfect. The appeal is therefore decreed, and the order of the lower court reversed, to which the case will be returned for re-trial with reference to the above observations.

THE 5TH DECEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 8 of 1845.

Appeal from the decision of Mr. Thomas, Acting Sudder Ameen.

Nundkishore Doss, (Defendant,) Appellant,

versus

Messrs. Busch and Bonnevie, (Plaintiffs,) Respondents.

Case No. 6 of 1845.

Sumboochunder Roy Chowdry and Kallee-chunder Roy Chowdry, Uzurdars (Appellants),

versus

The above (Plaintiffs.)

THIS suit was instituted by the plaintiffs, as farmers of Purbbagh, for the recovery of an enhanced rent from 1249 B. S., founded on measurement and jumma bundy amounting to three hundred and thirteen rupees, fifteen annas, and eleven pie, assessed agreeably to the village rates, on one gown, eleven doons and four kannies, and a quarter of land, stated to be in the possession of the defendant in the village of Sunai Karjee, under the provisions of Regulation V. of 1812.

Only one of the defendants, (appellant,) answers to the suit, stating that he and his brother, the other defendant, are only in possession of three bissees of land, which have borne a yearly jumma, for more than twelve years, of Sicca rupees 12, 11 annas, 15½ gundahs. That the excess of land stated to have been discovered by the plaintiffs as in his occupation consists of lands belonging to him and other ryots, in different villages, in another estate, and not in the plaintiffs' farm of Purbbagh, and that the rates agreeably to which the plaintiffs have assessed the lands are not those prevailing within the limits of the village of Sunai Karjee.

On examining the proceedings, it appears that the sudder ameen, under date the 4th March 1845, decreed, with costs, an increased rent from 1249 B. S., of one hundred and sixty-four rupees, seven pie, and four krants (164-0-7-4,) assessed on nine bissees, sixteen doons and thirteen kannes and a half.

This decision was founded on the mere report of the local ameen, without any evidence having been called for to test the accuracy of the said report, notwithstanding strong objections had been urged by the appellant in a petition filed the 21st February 1845, to the ameen's measurement and rates of assessment, to the former, as having erroneously included lands in the possession of the defendants and that of other ryots situated in the estate of Kaknea, and

to the latter, as not being the village rates of Sunai Karjee. The sudder ameen should have thoroughly sifted the defendant's objection before deciding the suit against him, by calling upon him for evidence in proof of the ameen's errors and the correctness of his statement.

It moreover appears that the zumindars of Kaknea, namely, Sunboochunder and Kalleecheunder Roy Chowdries, similarly objected, by petition, filed on the 31st December 1844, to the correctness of the ameen's measurement, as having embraced lands belonging to their estate, which, although the deduction stated in the court's decree above cited was allowed to these petitioners, was not of the extent in respect to which objections had been preferred to the ameen on their part, whence they have separately appealed.

Under the above circumstances, considering the lower court's decision to have been passed on insufficient enquiry, it is ordered that both these appeals be decreed, and the order of the lower court be reversed, to which the case will be returned for re-trial with advertence to the remarks above stated.

THE 11TH DECEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 7 of 1845.

Appeal from the decision of Mr. J. N. Thomas, Acting Sudder Ameen of Rungpore.

Furruck Mahomed Sirkar, (Defendant,) Appellant,

versus

Messrs. Busch and Bonnevie, (Plaintiffs,) Respondents.

THIS suit is instituted by the plaintiffs as kutkinadars of Hurreena Gabra, mehal Rumna, attached to the Sirkar Nizamut (Nuwab of Moorshedabad,) situated in pergunnah Bahirbund, for the recovery of an enhanced rent for the year 1250 B. S., of five hundred and twenty-one rupees, ten annas and seven pies, assessed, on measurement, on seven hundred and twenty-one beegahs, eighteen cottahs and a half of land, of various quality, in the joint possession of the appellant and two other defendants, under Section 9, Regulation V. of 1812 A. D.

The appellant alone of three defendants answers to the suit, stating that he had purchased from the other two defendants their share in the lands in question, which do not contain seven hundred and twenty-one beegahs, eighteen cottahs and a half, the plaintiff's measurement, which was conducted in the absence of the appellant, having included other lands belonging to him in Bahirbund (the rents of which are payable to the zumeendar of that pergunnah) and to other ryots. The appellant alleges,

also, that the plaintiffs have omitted to specify in their plaint the rates of assessment and the length of the measuring rod, and that they have not shown how they have been empowered to bring this action under this Regulation.

The sudder ameen, on a review alone of the roeedad of the local ameen of the 9th July 1845, decreed for four hundred and three beegahs and seven cottahs (403-7,) liable to a yearly assessment of two hundred and eighty-eight rupees, nine annas, seven pies and seven krants from 1250 B. S., together with costs and interest thereon.

From this decision an appeal is preferred on the plea, that the appellant is a khodcasht ryot not liable to an increased rent; that he has pottahs for the land in question, which, owing to the confusion of papers after the death of his father and brother, he had been unable to produce at the time of the trial of the suit, and that the sudder ameen had omitted to ascertain from the plaintiffs what authority they had acquired from the Sirkar Nizamut, the proprietor of the disputed land, to subject his (appellant's) lands to an enhanced rent, either as farmers, under farmers, or kutkinadars.

On an examination of the proceedings it appearing that the defendant, (appellant,) had filed on the 5th February 1845, a petition of objections to the hustabood effected by the local ameen, which had not been enquired into by the sudder ameen, it was proper that he should have enquired into them before passing his decision, whence, for this reason, the decision is imperfect. It is therefore ordered, that the appeal be decreed, and the order of the sudder ameen reversed, to whom the case will be returned for re-trial.

THE 18TH DECEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 5 of 1845.

*Appeal from the decision of Mr. J. N. Thomas, Acting Principal
Sudder Ameen of Rungpore.*

Lall Bebee, (Defendant,) Appellant,

versus

Anund Mohun Chowdry and others, heirs of Kumlakant Chowdry,
(Plaintiffs.) Respondents.

THIS action was brought by the plaintiffs for the recovery of possession of fifty-two beegahs and fifteen cottahs of land, situated in the village of Jeendhu, pergunnah Mooktepore, of which a mokurrory pottah had been granted to their ancestor, Kumlakant

Chowdry, under date the 23rd Bhadoon 1200 B. S., fixing the rent, in perpetuity, at twelve Sicca rupees per annum, by Raja Gocoolnath Roy and Roy Nubogour, from which they had been dispossessed in Kartick 1240 B. S., by Khoda Bux Chowdry, the deceased husband of the appellant and by others, laying their suit, including wasilat, at rupees 1,536-5-6.

Of the defendants only one, viz. the present appellant, answered to the suit. She denies the allegation of the plaintiffs, stating that she herself purchased, on the 15th Jeyt 1248 B. S., the jote in question from Monie Bebee, the other wife (with herself) of Khoda Bux Chowdry, to whom (Monie) the zumeendar, Ranee Joy Doorgah, the wife of Raja Gocoolnath Roy (one of the grantors of the mokurrory pottah to Kumlakant) gave a lease dated the 21st Jeyt 1239 B. S., at a yearly jumma of twelve Sicca rupees on the plea of the former jotedar, viz. Kumlakant Chowdry, having absconded in 1237 B. S., after which up to 1239 the land had been held khas.

The acting principal sudder ameen, on the inability of the defendant to prove the abscondment of Kumlakant, decreed the restitution of the jote in favor of the plaintiff, with costs payable by the appellant but without wasilat.

From this decision an appeal was preferred on the ground that more than twelve years having elapsed since the date of the pottah granted to Monie Bebee, viz. the 21st Jeyt 1239 B. S., the suit having been instituted on the 19th Bhadoon 1251, the action was barred under Regulation II. of 1805.

The plaintiffs have clearly made out their case, producing the mokurrory pottah referred to by them, authenticated by the official signature of Mr. Montgomery, register of the zillah court of Rungpore, and supporting the fact of possession by receipts for rent, bearing the seal of the zumeendar, Ranee Joy Doorgah, extending, with the exception of a few years, from 1229 to the 13th Assin 1240 B. S., from which latter date the plaintiffs having been dispossessed, the suit was instituted within the period of 12 years.

The defendant has failed to prove by any sufficient evidence that the lessee, Kumlakant, had deserted his jote in 1237 B. S., as asserted by her, and the pottah in favor of Monie Bebee of the 21st Jeyt 1239 B. S., purporting to have been granted by Ranee Joy Doorgah, as bearing her seal, appears unworthy of credit, as it is different to that borne on the plaintiff's receipts for rent above referred to, which seems to correspond with the seal of the Ranee on another document in this court, dated 2d Assin 1250 B. S.

For the above reasons the appeal is rejected, and the order of the lower court confirmed.

It does not appear that the plaintiffs have appealed in regard to the wasilat disallowed by the lower court, whence no consideration is called for on the subject.

THE 18TH DECEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 14 of 1845.

Appeal from the decision of Mr. J. N. Thomas, Acting Sudder Ameen of Rungpore.

Furruck Mahomed Sirkar, (Defendant,) Appellant,

versus

Messrs. Busch and Bonnevie, (Plaintiffs,) Respondents.

SINCE this plaint has been instituted for the recovery of the arrears of rent of 1249 and 1250 B. S., in respect to an appeal of which latter year, on the subject of increased rent, No. 7 of 1845, the case was ordered, under date the 11th December 1846, to be returned for re-investigation, and which formed the ground of the present plaint as regards the year 1250, it is ordered, that this appeal be, also, decreed, and the orders of the sudder ameen reversed, to whom the suit will be remanded for re-trial along with the case above cited.

THE 19TH DECEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 15 of 1845.

Appeal from the decision of Mr. Thomas, Acting Sudder Ameen of Rungpore.

Setul Chander Surma Mujmoadar, (Defendant,) Appellant,

versus

Messrs. Busch and Bonnevie, (Plaintiffs,) Respondents.

THE plaintiffs, as farmers of talook Gorgown, sue the defendant, a ryot, for the arrears of rent of his jote, comprising parcels of land in gird Burra Bheeta, Neezpara, and Malee Moollee, for a part of the year 1250, and up to Poots 1251 B. S., amounting for the former year to rupees 172-7, and for the latter to rupees 148-8-8, making, for the two years, the sum of rupees 320-11-8, besides interest rupees 36-10-10, the whole claim being laid at 357-6-6.

The defendant, in refutation of the claim, alleges that he resigned his jote to Gucoolchand Roy, the tehsildar of the plaintiffs, in Maug 1249 B. S., withdrawing from all further occupation of the jote, which the plaintiffs alone subsequently possessed, and that

in respect to the plaintiffs having realized, of his rent for 1250 B. S., the sum of rupees 19-14-4, under Regulation V. of 1812, that his brother's personal property was attached, who obtained its release on payment of the above sum, but that these circumstances were entirely unknown to him, at the time, adding that, if evidence be taken from him, it will be found that the plaintiffs were in possession after his resignation.

The plaintiffs in reply deny that the defendant ever resigned his jote.

The sudder ameen, discrediting the evidence adduced in support of the defendant's resignation of his jote, and it having been proved by the roeedad of the ameen appointed under Act I. of 1839, that the sum of rupees 19-14-4, had been realized from the defendant in Bhadoon 1251, account of the rent of 1250 B. S., and that the defendant had remained in possession after his alleged resignation, decreed with costs in favor of the plaintiffs.

The defendant only in general terms objected to this decision on appeal.

On reviewing the proceedings, since there appears no reason for impugning the justness of the decision appealed from, it is ordered that the appeal be rejected, and the order of the lower court be confirmed.

ZILLAH SARUN.

THE 11TH DECEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 139 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 26th June 1846.

Dena, Cloth Maker, (Plaintiff,) Appellant,

versus

Lullitram, (Defendant,) Respondent.

CLAIM, to reverse a summary award for rent, amounting to Company's rupees 50-14, on account of 1st quarter of 1253 Fussily, and arrears of 1252 Fussily, due for 23 beegahs of land in Mustaphabad, pergunnah Burreye, including house rent.

Defendant in this case represented himself as the purchaser of the rights and interests of Tusudduk Hosein, (one of the sons and heirs of Tusudduk Ali,) a joint proprietor, with others, in the largest of three portions of the above named estate, and had sued plaintiff summarily for arrears of rent, as above specified, on account of 23 beegahs of land.

The assistant collector on the 13th February 1846, decreed summarily in favor of defendant, which plaintiff sues to annul by the institution of a regular suit.

Plaintiff urges that he and his brother cultivated only 6 beegahs in the large share, the rent of which is 14 rupees, 4 annas, and out of which he is responsible for only 4 beegahs, 4 cottahs, at 8 rupees, 12 annas, as the rest belongs to his brother. Defendant replies that plaintiff refused to enter into written engagements, and therefore he charged according to the former rates.

The moonsiff of Chuprah upheld the summary award, seeing no sufficient reason to interfere.

It was held in appeal that the moonsiff's decision appeared defective, and contrary to the mode of adjudicating suits of this nature. Defendant, the purchaser of an undefined share in one portion of the estate, sued summarily for arrears of rent at the rate of rupees 117-8 on account of beegahs 23. The ryot denies cultivating with his brother more than 6 beegahs of land in the large share. No written engagements exist, therefore defendant was bound to conform to the rules of Regulation V. of 1812, both in assessing and demanding payment of his rent. This he has failed to do. No formal notice was served at the season of cultivation, notifying the specific rent to be paid by the tenant for the ensuing

year, nor is it shewn that the amount demanded was conformable to the pergunnah rates. Under these circumstances the decision of the moonsiff, founded upon the evidence merely of three witnesses adduced before the revenue officer, without any further enquiry by the court into the allegations set forth by the parties, cannot be confirmed.

ORDERED,

That the appeal be decreed, and the decision of the moonsiff of Chuprah be reversed, and the costs be liquidated by respondent.

THE 12TH DECEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 30 of 1845.

A Regular Appeal from a decision passed by Moulvee Syed Mahomed Rafick, Principal Sudder Ameen of Sarun, dated 17th September 1846.

Rajkoomar Sing, (Defendant,) Appellant,

versus

* Ramchurn Saho, (Plaintiff,) Respondent.

CLAIM, Company's rupees 3,220-10, principal and interest, on account of a bond dated 3d Sawun 1251 Fussily.

On the 12th February 1845, plaintiff instituted this suit, setting forth that defendant had, on the above mentioned date, borrowed the sum of Company's rupees 2,995, and had executed a bond stipulating to pay the amount principal, with interest at one per cent. per mensem, by the 28th Poos 1252 Fussily, which having failed to do, he, plaintiff, sues to recover with interest amounting to Company's rupees 225-10.

Defendant admits having executed the said bond, but explains that it was in part of a former bond dated 20th Phagoon 1251 Fussily, for Company's rupees 4,999, which was executed conjointly by him and his elder brother Jobraj Sing in favor of plaintiff, and which plaintiff had duly recovered by a separate action, and that this bond was subsequently executed by him alone for his half share of the said bond, including interest and another item, (Company's rupees 388-1,) which he had drawn for in favor of Gokulchund as below specified, viz.

Company's rupees... 2499 0 0 his half share.

107 7 0 interest.

388 1 0 by draft in favor of Gokulchund,

2995 8 0

praying the court to reject this claim for a debt which had been already satisfied.

The principal sudder ameen decided that the two bonds bearing different dates were separate and distinct, and had no apparent reference with each other; that defendant had failed to produce his witnesses in support of his plea,—passing a decree in favor of plaintiff for the amount claimed, with costs and interest on the amount principal to the date of his decision, and from that date on the full amount decreed, including interest and costs, to the date of liquidation.

It was held in appeal that the decision of the lower court appeared just and proper. The defendant clearly admits the execution of the bond under litigation, and the subscribing witnesses declare the money to have been paid in cash, and further that no mention was made in their presence of any previous bond; moreover it appears highly improbable that Rajkoomar Sing, the appellant, who is an educated person, would deliberately execute a separate bond in his own name for his share of a former bond (also executed by him) with a view of absolving himself from joint responsibility with his brother, without making some stipulation to that effect in the second bond to avoid becoming liable for the payment of both. The exigencies of the brothers at the time, in order to release their landed property from the Court of Wards is well known, and this subterfuge to evade payment of money loans taken from mohajuns to effect that purpose is by no means creditable to Baboo Rajkoomar Sing.

ORDERED,

That this appeal be dismissed with costs, and the decision of the principal sudder ameen be affirmed.

THE 12TH DECEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 140 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 26th June 1846.

Sheik Munsub Ali, (Plaintiff,) Appellant,
versus

Lullitram, (Defendant,) Respondent.

CLAIM, for reversal of a summary award for rent passed by the assistant collector dated 20th February 1846, and annulment of plaintiff's security bond for Company's rupees 88-6.

Plaintiff set forth that he was a "karperdaz" or manager of the entire village "Mustaphabad," pergunnah Barreye, which was divided into three portions, and had cultivated 16 beegahs, 14 cottahs of land which was assigned to him in lieu of wages, and to which fact Sheogobind Lal, the putwary, and Doorga Rai and Gopee Rai, tuhsildars, would testify; notwithstanding which, the defendant

(who had purchased the rights and interests of Tasudduk Hosein, one of the sons of Tasudduk Ali, a joint proprietor in the largest portion) had distrained for rent on account of 1st quarter of 1253 and arrears of 1252 Fussily, declaring him to be in possession of 42 beegahs, 10 cottahs of land, the rent of which was rupees 183-8, and had obtained a summary decree in his favor, whereas he in fact cultivated no land whatever in defendant's purchase, praying for a reversal of the said summary decree.

The moonsiff of Chuprah decided that the summary award was correct, as plaintiff had adduced no proof of his being entertained as a manager upon an assignment of 16 beegahs, 14 cottahs in lieu of wages as set forth, and the cultivation of 42 beegahs, 10 cottahs as stated by defendant was proved by the evidence of Gooroo-per-shad, Kishna, and Dhunnee, three witnesses cited for that purpose.

It was held in appeal that the summary award of the assistant collector is founded upon the evidence of three dependants of defendant, opposed to the testimony of the village putwarry Sheogobind and two tuhsuldars Doorga and Gopee; and plaintiff denies having cultivated any land in defendant's purchase. Defendant has produced no written engagement, and the notification issued on purchasing the share of Tasudduk Hossein was a general call upon the ryots to come in and enter into fresh engagements, but did not specify either the quantity of land, or the rent that would be demanded from plaintiff during the ensuing season as required by law, therefore the summary award upon the evidence merely of three interested witnesses cited by defendant should not have been upheld by the lower court without further enquiry. This decree will not however prevent defendant from realizing the rent of any land cultivated by plaintiff within defendants' purchase, when assessed and demanded according to law.

ORDERED,

That this appeal be decreed with costs, and the summary award, and the decision of the moonsiff of Chuprah be reversed.

THE 12TH DECEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 141 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 26th June 1846.

Tawajjoo Hosein *alias* Meron Jan, (Plaintiff,) Appellant,
versus

Lullit Ram, (Defendant,) Respondent.

CLAIM, to reverse a summary award for rent of first quarter of 1253, and arrears of 1252 Fussily, on account of 18 beegahs of land in Mustaphabad, *pergunnah* Barreye.

Plaintiff in this case claimed the right to cultivate 19 beegahs, 10 cottahs of land in the village, without paying rent, by virtue of being one of the proprietors of the village, which defendant (the purchaser of Tusudduk Hosein's share) disputed, claiming the right to assess, and describing it as 18 beegahs of land for which he demanded Company's rupees 104-8, and instituted a summary suit before the assistant collector for a quarter's rent, and for arrears of the former year as above specified, and obtained a decree, which plaintiff now sues to annul.

The moonsiff of Chuprah upheld the summary award, finding no ground of objection, in dissatisfaction of which plaintiff appeals.

It was held in appeal that although appellant is bound to prove his right to possession of the land which he claims to hold rent free in consideration of his proprietary right, nevertheless respondent's mode of assessment and demand, under the provisions of Regulation V. of 1812, was illegal, and the summary award should not under such circumstances have been upheld by the civil court upon the institution of a regular suit without further investigation.

ORDERED,

That this appeal be decreed, with costs payable by respondent, and the decision of the moonsiff of Chuprah be reversed.

THE 12TH DECEMBER 1845.

PRESENT: H. V. HATHORN, JUDGE..

No. 142 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 26th June 1846.

Shaik Ghulam Sirwur, (Plaintiff,) Appellant,

versus

Lullitram, (Defendant,) Respondent.

CLAIM, to reverse a summary award for 25 rupees, 4 annas rent, passed by the assistant collector on account of 3 beegahs of "zarayet" land in Tuwajjoo Hosen's share, on account of 1st quarter of 1253 and arrears of 1252 Fussily.

The merits of this claim correspond in all essential parts with case No. 141. In the former suit Lullitram brought his action summarily against Tuwajjoo Hosen, one of the maliks, for 18 beegahs, cultivated by the malik himself. In this suit he claims rent for 8 beegahs from one of Tuwajjoo Hosen's ryots. The mode of

assessment and demand in the absence of any specific engagement was illegal under the provisions of Regulation V. of 1812. The civil court should not therefore have upheld the summary award passed on such an illegal proceeding.

ORDERED,

That this appeal be decreed with costs payable by respondent, and the decision of the moonsiff of Chuprah, dated 26th June 1846, be reversed.

THE 12TH DECEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 143 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 26th June 1846.

. . Dhu'joo Saho, (Plaintiff,) Appellant,

versus

Isullitram, (Defendant,) Respondent.

CLAIM, for reversal of a summary award for rent amounting to Company's rupees 63-6, on account of 26 beegahs of land in "Mustaphabad," for the first quarter 1253, and arrears of 1252 Fussily.

Plaintiff in this case denied cultivating 26 beegahs, urging that he only cultivated 6 beegahs of land in the largest share, and that his rent was 12 rupees, 3 annas, and that he was ready to pay whatever portion thereof might be due to defendant as the purchaser of Tasudduk Hosein's share. The moonsiff of Chuprah upheld the summary award against plaintiff for the full amount claimed on account of 26 beegahs, as stated by defendant. But the mode of assessment and demand, in the absence of any specific engagement, was not conformable to law under the provisions of Regulation V. of 1812, and the moonsiff of Chuprah should not therefore have upheld the summary award passed upon an illegal proceeding without further enquiry.

ORDERED,

That this appeal be decreed, and the costs be paid by respondent, and the decision of the moonsiff of Chuprah, dated 26th June 1846, be reversed.

THE 12TH DECEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No 144 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 26th June 1846.

Shaik Munsub Ali, (Defendant,) Appellant,

versus

Lullitram, (Plaintiff,) Respondent.

CLAIM, for Company's rupees 91-12, on account of three quarter's rent of 1253 Fussily, on account of 42 beegahs, 10 cottahs.

The particulars of this case are recorded in the appeal case No. 140 of 1846. The only difference is that this suit is for three quarters' rent of 1253 Fussily, whereas the other was for one quarter of the same year. The claim was referred by the deputy collector of Sarun to the court of the moonsiff of Chuprah under Section 16, Regulation VIII. of 1831, it having come to the notice of the revenue officer that a regular suit on the subject matter of this claim had been previously filed in the moonsiff's court. The moonsiff, upon the same ground set forth in his decree regarding the quarter's rent, passed a decision in favor of the respondent for rent for the remainder of the year, but which cannot be upheld for the reasons assigned in case No. 140.

ORDERED,

That this appeal be decreed, with costs payable by respondent, and the decision of the moonsiff of Chuprah, dated 26th June 1846, be reversed.

ZILLAH SHAHABAD.

THE 3RD DECEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 23.

Appeal against the decree of Roy Shunker Lal, the Sudder Ameen of Shahabad, dated 8th June 1846.

Sheik Khan Mahomud, (Defendant,) Appellant,
in the suit of

Junour Dass, Jug Mohun Dass, and Munsubrit Dass, (Plaintiffs,)
Respondents, . .

. . *versus* . .

Musst. Doolum and Musst. Doorga, heirs of Ram Chund Saho, deceased, and Sectul Pershad, agent to the bank of the late Ram Chund Saho, and Sheik Khan Mahomud *alias* Sheik Khannoo, and Mulloo Baboo, heir of Kulloo Baboo, deceased (Defendants,) and Zohoor Hosein, heir of Chukun Beebee, Objector.

THIS suit was instituted, on the 12th September 1845, to recover the sum of 540 rupees, 3 annas, 3 pie, principal and interest, on a hoondée.

The plaintiff's declaration is, that Ram Chund Saho, a resident at Juanpoor, granted a hoondée for 282 in favor of, Khan Mahomud or Kulloo Baboo, which hoondée he sold to the plaintiffs for the same sum, and on their presenting it for payment Kulloo Baboo refused to honor it, and Ram Chund Saho also refused to honor it; that Ram Chund Saho is now dead and Mussomats Doolum and Doorgah are his heirs, and Seetul Pershad his agent; that Kulloo Baboo is also dead, and Mulloo Baboo his successor; that in a former suit to recover this money, the plaintiffs were nonsuited for having instituted a suit against Kulloo Baboo after his demise; that Kulloo Baboo was a perfumer, and not a banker, as the plaintiffs supposed, when they bought the hoondée; that this

suit is instituted to recover the amount of the hoondee, with legal interest, aggregating in all 540-3-3. Mulloo Baboo replies that Kulloo never accepted this hoondee, and that he himself is not a banker.

The heirs of Ram Chund Saho reply, that Ram Chund Saho was not in the habit of granting hoondees in his own name singly, and they know nothing about this transaction; that Ram Chund Saho used to grant hoondees in the name of the firm, Tarah Chund and Ram Chund; that on inspecting the books of the firm, no entry of any hoondee for 282 rupees is found; that there are entries of two hoondees one for 162 rupees, and the other for 125, in favor of Khan Mahomed, on the bank of Meer Abdoollah at Patna, which were sold by him to the plaintiffs, and which will be found settled for in the books of the bankers concerned, and that there is no entry of any hoondee on Kulloo Baboo.

Khan Mahomud replies, that he is the servant of Beebee Chukun, the second wife of Moulvee Alli Buxsh, and transacts all her business; that money and jewels to the value of 31,000 rupees belonging to his mistress are deposited in the bank of Tarah Chund and Ram Chund at 8 annas per cent interest, and this interest is paid either in cash or in hoondees. Several hoondees have been furnished on the banks at Patna, and this hoondee in question was sold to the plaintiffs; that two hoondees were granted on the bank of Meer Abdoollah, and this hoondee for 282 on Kulloo Baboo in satisfaction of interest due; that the plaintiffs made a voluntary purchase of the hoondee now in question, and must look to the grantor for satisfaction if it is dishonored, or to the firm on which it is drawn, and that he is in no way responsible.

The sudder ameen decides that since Khan Mahomed acknowledges the sale of this identical hoondee to the plaintiff, he is responsible to them for the amount, and a decree is therefore passed in their favor.

Against this decree Khan Mahomud institutes an appeal, in which he attempts to show that the responsible party is either the one who granted the hoondee, or the party on whom it was drawn.

JUDGMENT.

This decree appears to be quite just. The appellant admits the sale of the hoondee to the respondents, and the hoondee was dishonored by the party against whom it was drawn. The respondents have a fair claim against the appellant, and he again has his remedy, if he chooses to try issue on the point, against the party from whom he states he received the hoondee in question. I therefore confirm the decree, with all costs against the appellant.

THE 3D DECEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 25.

Appeal against a decree of Roy Shunker Lal, Sudder Ameen of Shahabad, dated the 21st July 1846.

Jatee Tewarree, Pudarut Tewarree, and Gondour Tewarree,
(Defendants,) Appellants, in the case of

Ishloke Tewarree, (Plaintiff,) Respondent,

versus

Jatee Tewarree, Pudarut Tewaree, Gondour Tewarree, Syud Oulad Hosein, and Nindot Dass, (Defendants.)

THIS suit was instituted, on the 12th February 1846, to recover the sum of 301-1, being principal and interest of a fourth share in 1,194 rupees.

The plaint sets forth, that Sobhao Tewarree died leaving four sons, Shalick Ram Tewarree, the father of Pudarut Tewarree, (defendant,) Geyan Tewarree, the father of Gondour Tewarree, (defendant,) Jatee Tewarree, and Ishloke Tewarree, (plaintiff,) who were partners in all transactions; that Sobhao Tewarree advanced 1,500 rupees to Syud Allee Imam on a mortgage of 45 biggahs of land, which was occupied by him and his heirs after him; that the heirs then advanced 500 rupees to Syud Oulad Hosein, the son and heir of Syud Allee Imam, on a mortgage of 15 more biggahs of land, when a deed was drawn up in the names of Jatee Tewarree and Geyan Tewarree, which was also held by the heirs jointly; that after this a settlement of accounts took place, when Syud Oulad Hosein gave his bond for rupees 954 drawn up in favor of the plaintiffs, Jatee Tewarree, Padarut Tewarree, and Gondour Tewarree, which bond was held by the plaintiff; that on this occasion Syud Oulad Hosein acknowledged that he was indebted to them all jointly in the sum of rupees 954, and asked for a further loan of rupees 1,500, and that then the whole debt should be entered in one and the same bond; that the plaintiff then sent his son, Beekoo Tewarree, with the other parties, taking with them the bond, for rupees 954, to complete the transaction at Arrah, when Nindot Dass took this bond from the plaintiff's son to make out the account, and it ended in a bond being drawn out for rupees 954, plus the interest thereon of rupees 240, plus the new loan of 1806, making a total of rupees 3000; in favor of Jatee Tewarree, Padarut Tewarree, and Gondour Tewarree, excluding the name and share of the plaintiff, the bond for rupees 954 being made over to Syud Oulad Hosein; and this suit is instituted to recover a fourth share of the bond for

rupees 954, with the interest on it of rupees 240, to which the plaintiff was a party.

The defendant, Syud Oulad Hosein, denies having had a transaction of any kind with the plaintiff, but acknowledges money transactions with the three other defendants to the amount of rupees 3000.

Nindot Dass replies that he did not take the bond for rupees 954 from the son of the plaintiff.

The other three defendants deny all right of partnership on the part of the plaintiff, and declare that their transactions are all carried on separate and distinct from him, and that if the plaintiff's name *was* inserted in the bond for rupees 954, it would also have appeared in the after bond for rupees 3000.

The sudder ameen decides that the evidence of the witnesses produced, and the features of the case, prove that the bond for rupees 954 was drawn up in the names of the plaintiff, and Jatee Tewarree, Padarut Tewarree, and Gondour Tewarree, that the witnesses produced to prove that only the names of the last three were inserted is discrepant, and it is not recorded in the bond for rupees 3,000 that only these three were parties to the former bond; that the defendants refuse to accept the challenge of oath offered to them by the plaintiff, nor will they agree to abide by the oath of the plaintiff, there is therefore no doubt about the truth of the plaintiff's claim, and that this is an attempt on the part of Syud Oulad Hosein and the other three defendants, to cheat the plaintiff out of his share; but since Oulad Hosein has given his bond to the three other defendants, they are responsible for the share of the plaintiff in the bond for rupees 954, and a decree is therefore given with interest and all costs against Jatee Tewarree, Pudarut Tewarree, and Gondour Tewarree, and the other two defendants are exempted from responsibility.

Against this decree an appeal is instituted on the part of Jatee Tewarree, Pudarut Tewarree, and Gondour Tewarree, in which they attempt to prove that the plaintiff was no party to the bond for rupees 954.

JUDGMENT.

I uphold this decree without summoning the respondents, as I can see no reason to alter the decision appealed from. The oral evidence clearly proves that the respondent *was* a party to the bond for rupees 954, which was made over to Syud Oulad Hosein, when the after bond for rupees 3,000 was drawn up, and the appellants' having refused the wager of law offered to them by the respondent, as well as refused to abide by the oath of the respondent, affords the strongest presumptive evidence that the respondent's claim is just, and his declaration a true one.

THE 4TH DECEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 26.

Appeal against a decree of Roy Shunker Lal, Sudder Ameen of Shahabad, dated 25th July 1846.

Dabee Pershaud, (Defendant,) Appellant,

In the case of

Goordhun Dass, (Plaintiff,) Respondent,

versus

Baboo Dabee Pershaud, Seller, and Ojoodheah Pershaud, Auction Purchaser, (Defendants.)

THIS suit was instituted, on the 3rd December 1845, to obtain possession and to become the registered proprietor of the whole of the village of Nursingpoor, and a $2\frac{1}{2}$ pie share in the village Jugneah, valued at 598-6-6.

The declaration of the plaintiff is, that Dabee Pershaud, (defendant,) mortgaged this property to the plaintiff for 8301 rupees, and entered into a regular bond dated 12th September 1837; that accordingly from 1245 up to 1249 the plaintiff had possession of the property, collected the rents and interests, and also paid up the Government revenue; that after this the property was sold in satisfaction of the decree of one Gholam Aheea, and was purchased in the name of Ojoodheah Pershaud, (defendant,) the son-in-law of Dabee Pershaud, for 275 rupees, and the plaintiff was thus dispossessed without the mortgage being paid off; that the plaintiff then petitioned the court for a foreclosure, and on the 17th December 1845, the mortgage was foreclosed in the regular way, and this suit is instituted to obtain possession of the property, with mesne profits from the date of foreclosure up to date of possession, and to become the recorded proprietor of the property.

The defendant, Dabee Pershaud, in reply admits the bond, and pleads that he has only received from time to time 4076-11-9 of the money, and that he made over the bond to the plaintiff, trusting to his honesty, and at the instigation of respectable people.

The defendant, Ojoodheah Pershaud, fails to defend the suit.

The sudder ameen decides that the bond is proved, and that the defendant does not deny it, and that the objection now raised by the defendant that he has only received a part of the mortgage money cannot be true, or it would have been mentioned when the defendant, Dabee Pershaud, petitioned the collector to have the plaintiff's name registered as mortgagee of the property, and also when the process of foreclosure was taken out by the plaintiff. A decree is therefore passed in favor of the plaintiff, who will obtain

possession, become recorded proprietor and receive mesne profits from the date of plaint up to date of possession.

Against this decree Dabee Pershaud institutes an appeal, and repeats the objection he urged to the plaintiff's claims in the first instance.

JUDGMENT.

The reply of the appellant admitting the bond, and the mortgage having been foreclosed in the regular way, establishes the claim of the respondent to possession in this property, and to become the recorded proprietor thereof, and there can be no reason to alter this decree, which is therefore upheld under Clause 3, Section 16, Regulation V. of 1831.

THE 16TH DECEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

Nos. 21 and 22.

Appeal against a decree of Moulvee Syed Munour Ally, Principal Sudder Ameen of Shahabad, dated 30th June 1846.

Government, (Defendant,) Appellant,
and Delawur Ally Khan and others, (Defendants,) Appellants,
in the suit of Musst. Kurreem Oonissa, (Plaintiff,) Respondent.

versus

The Government, Delawur Ally Khan and Musst. Taj Beebee, heirs of Ruhman Khan, Hedyet Ally Khan his brother, Sk. Ukber Ally, Kishendeal Tewarry, Gobind Opadia, Sew Sahoy Sing, Noor Hussun, Pertab Narain Sing, Naga Roy, Meajee Kumer Ally, Diem Ally Khan, Dulloo Khan, Musst. Nundo Kour, Musst. Sookochun Kour, Ajoodhea Roy, Hulwunt Roy, Seochurn Roy, Ram Dour Roy, Kurta Roy, Ram Sahoy Misser, Soumber Roy, Bachoo Roy, Dulum Roy, Reetoo Sing, Bhagee Sing, Hurlot Pandee, Kazee Elahebux, Ramowtar Roy, Buldeo Sahoy, Nasir Ally, Sk. Ubdool Ally, Deendeal Sookool, and Shamjee Sookool, (Defendants.)

THIS suit was instituted, on the 10th April 1845, to obtain possession of half the villages of Dhowanee, Shahzadpoor *alias* Saadutpoor Tyer, pergunnah Chynpoor, 3 as., 11 d., out of 7 as., 10 d. of Gomarea, pergunnah Saseeram, and mortgages on half of the whole share of Meajee Kumer Ally, in the village of Gomarea, and on 4 annas out of 8 annas of kharij juma aeemah belonging to Dyem Ally Khan, a right of farm and the rents of half the village of Tyer, pergunnah Chynpoor, ditto of half of Akoonee, pergunnah Saseeram, ditto of Bhandeerah in the same pergunnah,

ditto of half Kulianpoor and Kunah, and the share of Meer Mahomed, deceased, in the villages of Beelwah and Gurbah, the share of Bebee Salam in Gomarea, pergunnah Saseeram, half of Kazee Bag and Bag Namdar Khan, and Bag Futteh Mohomed, and Bag Ruhman Khan commandant, half of the land of mohullah bazar Janee, 4 biswas out of 8 biswas of potter's land, half of the house of Rubdad Khan, one share out of two shares in the fourth share of the purchased house of Moulvee Jeelaloodeen, the house inhabited by the defendants, half of a house at Saseeram, the whole valued at 4999-15-8-17½.

The plaintiff declares that her husband Ruhman Khan transferred to her the property above named under a deed (bye-mokusah) dated 16th September 1833, that it was his acquired property, and was made over to her as an equivalent for 20,000 rupees of her marriage portion of 50,000 rupees plus 500 gold mohurs, that Ruhman Khan undertook the agency of her property, that on her making a demand for the balance of her marriage portion, Ruhman Khan, in collusion with Delawur Ally Khan and Taj Bebee, son and daughter by his second wife, Rooshun Khanum, refused to make over this property or pay the balance due, that on this the plaintiff first instituted a suit for 39,000 rupees in the principal sudder ameen's court, and got a decree, which was confirmed on appeal before the Sudder on the 14th September 1839, that the principal sudder ameen issued the usual notices under Regulation II. of 1806, that Delawur Ally Khan and Taj Bebee, in collusion with Ruhman Khan, urged objections on the plea of a false transfer of property by Ruhman Khan to Rooshun Khanum, both in the regular suit, and in the consequent miscellaneous proceedings, that the objections in the regular suit were rejected by the Court, but the objections urged on the miscellaneous proceedings were eventually admitted by the Sudder, that to set aside that order a regular suit will be instituted, that without instituting legal proceeding possession under the bye-mokusah is impossible, that the village of Dhowaneea included in this deed was sold for arrears of revenue due from Ruhman Khan, and bought by him fictitiously, and he thus retained possession, and after his death his heirs, Delawur Ally Khan and Taj Beebee, on hearing of this action, alienated the estate by a pretended sale of it to Kishendeal Tewarree, Gobind Opadheea, and Shew Sahoy Sing, (defendants,) that Delawur Ally Khan and Taj Beebee, after the resumption of this property inserted in the bye-mokusah, sold the village of Goomareea to Sheek Noorool Hussen, (defendant,) that the remainder of the property is in their possession under the deed of transfer to their mother, Rooshun Khanum, this suit is therefore instituted to obtain possession and have the plaintiff's name recorded as proprietor.

The defendant, Gurreeb Sing, the heir of Musst. Nundoo Koer, pleads that he has nothing to do with this suit, nor has he any right or interest in the village of Tyer.

The defendants, Ujoodhia Roy and Musst. Golab Kower, plead that the whole village of Akonee was purchased by them from the collector in 1226 F. S., in equal shares with Nukchade Roy, (defendant), and that his share alone was mortgaged to Ruhman Khan, and after his death it was occupied by his heirs Delawur Ally Khan, &c, and was sold in satisfaction of a decree in 1248 F. S., and bought by Shamchurn Roy, in whose possession it now is. Shewchurn Roy, defendant, pleads a similar defence.

The defendant, Baboo Ram Roy, pleads that Gujraj Roy and others, the proprietors of Kullianpoor, sold half the village to his father Doolum Roy, whose name was duly registered, and he is himself now the recognised proprietor.

Delawur Ally Khan and Taj Bebee reply that Ruhman Khan, their father, married their mother, Rooshun Khanum, at Hyderabad, on the 25th Ramzan 1223 Hidjree, and gave her a marriage portion of rupees 40,000 and one gold mohur, and in liquidation of this portion he gave up to her all his property, which was enjoyed by the lady during her lifetime, and on her death she made it all over to them, that during their minority the management of the property was made over under a deed, dated 15th Ramzan 1232 Hidjree to Maun Bebee, another daughter of Ruhman Khan, and Hedyet Ally Khan, his brother and their uncle, that on the 29th Showul of that year Rooshun Khanum died at Hyderabad, and the defendants were taken charge of by Maun Bebee and Hedyet Ally Khan, and after some time the whole party came from Hyderabad to Saseeram, and the house of Jankee Ram was purchased in the name of Delawur Ally Khan, and other houses were purchased in the joint name of him and Hedyet Ally Khan, that after this Ruhman Khan, on entering into an agreement not to alienate nor squander the property, got possession of all the effects from Hedyet Ally Khan, and undertook the agency, and all the transactions he conducted were effected by the money of the estate, that on the defendants arriving at the majority Ruhman Khan made over to them all the effects, cash, documents, &c., and signed a deed, disclaiming all right and title to the property, dated 8th Rubbeecool-uwul 1244 Hidjree, that since this Delawur Ally Khan, on his own behalf and on behalf of Taj Bebee and Maun Bebee, has had full possession, that Maun Bebee died on 8th Rubbeecool-uwul 1253 Hidjree, and her share lapsed to the two remaining heirs, that the plaintiff was not the wife of Ruhman Khan, that the true state of the case is that after the death of Rooshun Khanum, the plaintiff was bought by their father from a procuress at Hyderabad, and placed in charge of his children, and thus accompanied the party to Saseeram, and

that when Ruhman Khan and Delawur Ally Khan came up to Arrah, Taj Beebee and Maun Beebee went to reside at the house of the latter, leaving the plaintiff at home by herself, when she eloped to Patna at the instigation of Shah Kubbeeroodeen and his brother, taking with her their property, amounting in all to 80,000 rupees, that this became the subject of a criminal prosecution, and it is quite possible that the Shah Sahib at that time concocted the bye-mokusah, and that, if Ruhman Khan did enter into any bond suggested by Shah Kubbeeroodeen to recover the property, it is not binding, that Shah Kubbeeroodeen brought the plaintiff and the property back from Patna and placed them in the house of a female acquaintance of his of the name of Bismuteah, and some days afterwards the whole of the property, amounting to 80,000 rupees, was plundered, and the Shah's brother was fined by the criminal court for the part he took in the transaction, that the plaintiff is not the wedded wife of Ruhman Khan, nor has Ruhman Khan himself any title to any particle of the property, nor is any deed of his in favor of the plaintiff good and valid, that they inherit none of the effects of Ruhman Khan, and the plaintiff has therefore no claim against them.

The defendant, Ukbur Ally Khan, pleads, that he purchased the village of Dhowanee and Sahaditpoor Tyer from the collector, and on account of the heavy jumma assessed on the property, Sahaditpoor Tyer was sold for arrears of revenue, and the village of Dhowanee has been subsequently sold to Kishendeal Tewarree, and that it was not a fictitious purchase for Ruhman Khan, Delawur Ally Khan, and Taj Beebee.

Noorool Hussen replies that he bought the village of Gomareea at the collector's auction.

Hedyet Ally Khan makes a defence similar to Delawur Ally Khan and Taj Beebee.

Dulloo Khan pleads that Dyem Ally Khan mortgaged a garden to Ruhman Khan, the guardian of Delawur Ally Khan, &c., and in 1244 F. S., the money was paid up, and Dyem Ally Khan came again into possession, and afterwards sold a half share of the garden and other property to him, that on a former occasion the plaintiff entered this garden in an inventory of the property of Ruhman Khan, which was exempted from liability on his objections.

Ramdour Roy replies that the villages of Bhuronee and Bhandehra were purchased by Kirtah Roy, Ram Sahoy, and himself, and that the purchase made by Kirtah Roy of eight annas took place more than twelve years ago.

Ram Sahoy pleads that he knows nothing about the farm and rents mentioned by the plaintiff, but that he has possession of two annas of Bhuronee and Bhandehra by right of purchase.

Deendeal Sookool and Shamjee Sookool plead that a house at Saseeram was sold by the moonsiff and purchased by their ancestor,

and that they were not furzee for Ruhman Khan and Delawur Ally Khan.

Kishendeal Tewarree, Gobind Opadiah, and Shew Sehoy Sing, plead a defence similar to Ukbar Ally Khan.

The Government defend the case by pleading that the village of Dhowanee, Pergunnah Chynpoor, was the registered property of Ruhman Khan, and on the 25th November 1834 was sold for arrears of revenue, and purchased by Ukber Ally Khan, that the plaintiff's name does not appear on the Government records, that the plaintiff did not petition against the sale nor did she bring to notice the fictitious purchase of Ruhman Khan, &c., in the name Ukber Ally Khan, that the settlement of the village of Gomareea was made with Delawur Ally Khan, Taj Beebee, and Nassur Ally, which was also sold for arrears of revenue on the 18th November 1843, and purchased by Noorool Hussen, and against this no petition was preferred to the commissioner, and, since this suit was instituted on the 10th April 1845, this suit is barred under Act XII. of 1841, Clause 25, that with regard to half the village of Shahzadpoor *alias* Sahaditpoor the plaintiff makes no mention of the sale of it in her plaint, and no reply is therefore requisite, it is as well to mention however that the plaintiff's name is not registered as the proprietor.

Lastly, Musst. Najeibun pleads that the house which the plaintiff styles hers, and the land on which it is built, were purchased by Ruhman Khan, as guardian, in the name of Hedyet Ally Khan and Delawur Ally Khan, and other houses were also bought in the same way, that prior to the institution of this suit she bought the house in question for rupees 3000, and that if Ruhman Khan entered this house in the bye-mokusah, and it was bought with the money belonging to Delawur Ally Khan, the plaintiff has no claim upon it, but after the sale Delawur Ally Khan rented the house, the imputation of a fictitious sale therefore falls to the ground.

The principal sudder ameen decides that the plaintiff's right of possession is proved by the bye-mokusah, and that the sale of the villages of Dhowanee and Sahaditpoor for the debts of Ruhman Khan was irregular, that the copies of the documents filed by the defendants, Delawur Ally Khan and Taj Bebee, show that the originals were neither registered nor signed and sealed by the gazee, that these documents were filed in the Sudder Court in original, and now only copies are filed, which is a suspicious circumstance, that when these defendants filed their objections in the suit of the plaintiff *versus* Ruhman Khan, which was decided on the 9th July 1838, they made no mention of these documents, and on being asked if they had any document to prove the marriage portion to their mother Rooshun Khanum, they replied in the negative, that Delawur Ally Khan is a witness to the bye-mokusah held by the plaintiff, which would not have been the case had he considered

himself entitled to the property therein transferred, that from copies of certain powers of attorney filed in the case it appears that Delawur Ally Khan was agent for Ruhman Khan for some of the villages inserted in the bye-mokusah, he could not therefore have been a proprietor, that the property now claimed by the plaintiff is not mentioned in any of the deeds produced by the defendants, that the object of their deeds is to prove that Ruhman Khan on the occasion of his marriage with their mother, Rooshun Khanum, transferred not only all the property he then possessed, but all he might acquire in future as a marriage portion to his wife, now there is no proof that this property was acquired by Rooshun Khanum, that these deeds produced do not in any way prove the proprietary right of the defendants' mother, nor do they prove that this property was purchased with Ruhman Khan's money, that the bye-mokusah gives the plaintiff full right and power over this property, and the objections urged against this right by Delawur Ally Khan and Taj Bebee, and the other defendants, who in their pleas attempt to support these objections, are not worthy of consideration, that although in the deed of sale of the compound of bazar Janee, in the mohullah Sasceram, dated 1st April 1841, it is stated that the purchase is made by Delawur Ally Khan, yet since this is also inserted in the bye-mokusah, the objections of the defendants on this point are inadmissible, but since the village of Gomareea was sold for arrears of revenue accruing on itself, and the plaintiff did not prevent this nor petition the commissioner against the fictitious sale of it, her claim as regards this village is inadmissible, a decree is therefore passed in full of the plaintiff's claim excluding this item.

Against this decree the Government institute an appeal, disclaiming all liability on account of the several villages having been sold by the collector in satisfaction of arrears of Government revenue due from Ruhman Khan, the registered proprietor of the estate.

An appeal is also instituted jointly by all the other defendants, which is a reiteration of their objections to the plaintiff's claims urged in the first instance, and the purchaser of the village of Gomareea prays to be exempted from the costs of this suit.

JUDGMENT.

I agree with the principal sudder ameen, that the bye-mokusah which is only objected to by the defendants on the plea that the property involved in it had been previously transferred to Rooshun Khanum as her marriage portion, clearly establishes plaintiff's right to possession in the property inserted in it. The decree of the Sudder for the money portion of the plaintiff's dower, puts the claim of the plaintiff to the property transferred to her in satisfaction of the remainder of the marriage portion, beyond a doubt. The defendants, Delawur Ally Khan and Taj Beebee, have

not a particle of proof to support their claims to keep possession of the property in question. The arguments used by the lower court to invalidate their title are fully borne out by the documents filed by them in the case.

I therefore uphold the decree against Delawur Ally Khan, Taj Beebee, and the several defendants, who plead in support of their claims; but as regards the liability of the Government to be held responsible for the sale of certain villages involved in this suit and the parties who were the auction purchasers of the estates thus sold, I differ with the principal sudder ameen. The villages of Dhowanee and Sahaditpoor Tyer and the house at Saseeram were certainly sold in satisfaction of arrears of revenue accruing *on another estate* registered as the property of Ruhman Khan, yet where was the irregularity of such sale? the estate in default, viz. mouza Champbasee, was *first* sold, and the arrear due was not realized by the sale, it was therefore quite legal in the collector to sell the villages of Dhowanee and Sahaditpoor Tyer, since Ruhman Khan, the defaulter, was the registered proprietor. The plaintiffs ought to have prevented the sale by making good the arrear, or at all events she ought to have appealed to the commissioner against the sale. Section 25, Act XII. of 1841 is as applicable to the sale of Dhowanee and Sahaditpoor as it was to Gomaree, and I presume this was the law which guided the principal sudder ameen to reject the claims of the plaintiff to Gomaree.

I therefore amend the decree by rejecting the claim of the plaintiff against Government, and the villages sold by the collector in satisfaction of arrears of Government revenue due from Ruhman Khan, and the defendants who are proprietors by right of auction purchase, and saddle the plaintiff with the costs of these several parties as well as with the costs incurred by the purchaser of Gomaree.

THE 16TH DECEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 23.

Appeal against a decree of Moulvee Syud Monour Allee, Principal Sudder Ameen of Shahabad, dated 30th June 1846.

Delawur Ally Khan, Tauj Beebee, and Oodit Sing, Perbut Sing, and Durshun Sing, heirs of Oomandit Sing, deceased, one surety, and Nishan Sing, the second surety, (Defendants,) Appellants,

versus

• Musst. Kureemoonnissa, Respondent.

THIS suit which is closely connected with the preceding case, ~~just~~ disposed of, was instituted on the 9th July 1843, to recover the sum of rupees 1,600, being the value of jewels and other property seized by the criminal authorities of this district.

The plaintiff sets forth that in 1834 a dispute arose between the plaintiff and her husband Ruhman Khan, when her personal property was seized by the magistrate, and placed in deposit till the rightful owner should be established; that she went over to Patna, when Ruhman Khan took the opportunity to get possession of all the property valued at rupees 1,946-1 Sicca rupees, by giving security, and that Ruhman Khan died whilst in possession of these goods, and on his death they came into the possession of his heirs Delawur Allee Khan and Tauj Beebee; that out of this property rupees 446-1 worth, belonged to Ruhman Khan, and this suit is instituted to recover the value of the remainder, viz. Company's rupees 1,600.

The defendants, Delawur Allee Khan and Tauj Beebee, plead in reply that Ruhman Khan made over all this property to Rooshun Khanum their mother as her marriage portion; that they never received any of the goods held in deposit under the order of the criminal court; that they intended to have instituted a suit to obtain these goods as belonging to their mother Rooshun Khanum, when the plaintiff anticipated them by bringing the present action.

The heirs of Oomandit Sing, one of the sureties, plead that the plaintiff has no claim against them as the security is not binding on them. Nishan Sing, (defendant,) the other surety, replies, that he is exempt from liability since there was no provision for the life or death of the parties concerned in the security bond, that Ruhman Khan is now dead, and that as he lived for five years after he obtained possession of the goods, the plaintiff ought to have brought her action during his lifetime.

The principal sudder ameen decides that the evidence of the witnesses and the papers produced in proof of the plaintiff's claim clearly establish her right to a decree in this case; that the objections urged by Delawur Allee Khan and Tauj Beebee, with regard to the property of Ruhman Khan having been transferred as a marriage portion to their mother Rooshun Khanum, have been rejected in the preceding suit; that their defence is a prevarication and an attempt to show that these goods belonged to them in right of their mother; that the objections urged by the sureties are untenable, and a decree is therefore passed against the defendants collectively.

Against this decree the defendants appeal jointly, and urge the same objections as they did in the first instance, and attempt to show that the witnesses produced to prove the plaintiff's case are dependants of Shah Kubeeroodeen.

JUDGMENT.

I agree with the principal sudder ameen that the plaintiff's case is proved, and that all the defendants are liable to make good the value of the property redeemed by Ruhman Khan, on security, and therefore dismiss the appeal with all costs on appellant.

ZILLAH SYLHET.

THE 1ST DECEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 3 of 1845.

Appeal from Sirinath Bidiabagish, Officiating Principal Sudder Ameen.

Sabira Banoo, heir of Shuhur Banoo, deceased, Nufeesa Banoo, Shores Beebee, and Ghouseool Hussun, Appellants,

versus

Gungapershad Deb, Shamkishur Sein, Brijkishwur Sein, and Gopalkishwur Sein, Respondents.

RESPONDENTS sued jointly, Gungapershad as auction purchaser, on the 20th Asarh 1242 B. S., of talooka Shureef Mahomud, and the rest as under-purchasers from him, in the name of their late brother Gour Kishur, on 22nd Sawun 1244 B. S., praying that the said under-purchasers might be put in possession of the lands of the talooka, comprising 26 parcels held by appellants, &c., and that the mesne profits might be refunded to them.

Shorish Beebee, grandmother, Saadutoolah, (since dead,) husband, and Ghouseool Hussun, son of Nufeesa Beebee, answered, alleging that 1 kear, 2 pao, 2 jet, 3 reg, 2 pun of land, estimated by respondents as only 1 kear, 2 pao, and appertaining to talooka Mahomud Oolfut, No. 16, and now the property of the said Nufeesa Beebee and Ghouseool Hussun, and of Shumsool Hussun his brother, had been included in parcel 20 of the plaint, that 2 pao, 4 jet, 2 reg, belonging to the said three proprietors of talooka Mahomud Oolfut Chowdree, together with 1 kear, 2 jet, 2 reg, belonging to Mahomud Yaseen, had been included in parcel 22, and that the lands of other proprietors were included in other parcels, with other immaterial matter.

Mahomud Mohfuz *alias* Mahomud Mohsin answered that his father bought 4 kears of land in the talooka, and obtained a decree for 1 kear, 2 pao, 5 jet, of it, against the late proprietor Wuzeer Mahomud, who had possession; that respondents had been placed in possession of it by the ameen deputed to give them possession of the talooka, and that he and his co-partners had been sued without cause.

Shuhur Banoo, widow of Mahomud Yaseen, in her answer claimed parcels 1 and 4 (with the exception of 1 pao, 3 jet, 2 reg, of the latter, which she admits to belong to respondents)

talooka), together with parcels Nos. 19, 20 and 25 of the plaint, as belonging to her talooka Nuzzir Mahomud, No. 637, also parcel No. 18, as part of her talooka Mahomud Nyjat, No. 17, with parcels Nos. 21 and 22, (excepting $2\frac{1}{2}$ kears of the latter, which she asserts to belong to Nufessa Beebee, &c.) as her property in talooka Mahomed Oolfut No. 16; while she declares parcels Nos. 5 and 6, the hereditary property of her late husband, in talooka Mahomed Ushruf—stating other unimportant particulars.

Humeeda Beebee, Syyud Ool Nissa, and Mahomed Moazum, answered that they had none of the land of respondents' talooka in their possession.

Jye Gobind Deb and others, in their answer, alleged that part of the muddud mash lands in the *pottah*, or title deed, given to Sudfer Shah, with lands of others, have been included in respondents' claim, denying possession of any part of the same.

Kishun Kunt Surmah, petitioner, alleged that 5 kear, 1 pao, 2 jet, 2 rég, or parcels 7, 12, 17, of the plaint, is his rent free land, appertaining to muddud mash lands in the name of Ramkishun Bisharud: that parcel 7 corresponds with plots 5, 6, and 7 of his pottah, parcel 12 with plot 4, and parcel 17 with plot 2, and that respondents had mis-stated the boundaries and extent of the land, and wrongly omitted to sue him.

Respondents, in the replies filed by them, denied the allegations in the several answers, and stated that the late proprietor of their talooka was in possession of the whole of the land claimed by them. In reply to the answer of Shorish Beebee, &c., they observed, that these appellants had described the lands of Mahomed Yaseen, instead of parcel 9, as on the eastern boundary of parcel 20 of the plaint: that the decree obtained by Shoojaut Mahomed, the father of Mahomed Mohfuz, defendant, for the land measured as parcel 9, on the eastern side of parcel 20, against Mahomed Wuzeer; the late proprietor of their talooka, shews that the land on that eastern side is not of the estate of Mahomed Yaseen, and that parcel 20 does not belong to these appellants; and they remarked that the property of Mahomed Yaseen had been wrongly described on the western boundary of parcel 22, instead of the deserted pathway of their talook. In their reply to Shuhur Banoo, &c. they observed that though this appellant had alleged part of parcel 21 to belong to Ghousool Hussun, &c., these persons had not claimed it; and, again, that parcel 20, which is claimed, by this appellant, as part of *her* talooka No. 637, is also claimed by the said Ghousool Hussun, &c., as appertaining to *their* talooka No. 16. In reply to Jye Gobind, &c. they observed that these defendants obtained a pottah for land in the name of Kishunkant, petitioner, as appertaining to the muddud mash tenure of Ramkishun Bisharud, but that the said pottah had been annulled by the collector, on the petition of Gopal Kishwur, respondent.

The officiating principal sudder ameen, Sirinath Bidiabagish, after stating the questions which, in his opinion, required adjudication, and observing that the ameen deputed to give possession of the talooka in consequence of the auction sale, had measured parcels 1 to 17 out of 26 parcels claimed, and had filed the papers connected with his deputation without completing its object, and that those papers had been passed as satisfactory by the judge, on the 6th of August 1841, proceeded to observe, that the claims of Shuhur Banoo to parcels 1, 4, 5 and 6, of the plaint, and of Kishunkant, petitioner, to parcels 7, 12, and 17, were not advanced when possession was being given under the auction sale, while no suit had been brought to annul the possession, and that the one or the other of these acts would have been performed had the claims been true, and that, as neither had been performed, they appeared to be untrue: that from the collector's report, under Section 30, Regulation II. 1819, the lands of parcels 7, 12 and 17 were shewn to have been measured as part of the muddud mash of Ramkishun Bisharud, and settled as such, but to have been subsequently ascertained to belong to respondents' talooka, and released from the said settlement, on the petition of Gopal Kishwur, respondent, and that these circumstances also shewed the plea of Kishunkant, petitioner, to be false; that Ghouseool Hussun and his party stated parcels 20 and 22 to belong to talooka No. 16, and to be *their* property, while Shuhur Banoo contrarily claimed the former parcel as belonging to her talooka No. 637, and the latter to talooka 16, and to be *her* property: that, moreover, Shuhur Banoo had pleaded 2½ kears of land, in parcels 21 and 22, to belong to Ghouseool Hussun, &c., but that the latter had not claimed it: and, under these circumstances, the officiating principal sudder ameen deemed the claims of these appellants to be untrue, noticing, in corroboration of this opinion, that parcels 18, 19, 20 and 21 were the surrounding lands of parcel 9, for which Shojaut Mahomed had obtained a decree, in which the said surrounding lands are mentioned as appertaining to respondents' talooka, and also that the map filed by respondents, and the land roll of the measurement of the rent free land, indicated parcels 20 and 22 to belong to it likewise: that as the claims of appellants were false in so many instances, their claim to parcel 25 must be presumed to be false also, and that the remaining parcels were not claimed by any of the defendants, and were proved, by the witnesses to belong to respondents' talooka; and respondents' claim is decreed, by the officiating principal sudder ameen, in their favor, against all the persons sued, it being provided that the mesne profits shall be ascertained and refunded by those who, at the time of execution of the decree, may be ascertained to have appropriated them.

Appellants, dissatisfied, now plead that a local investigation of the case was solicited by them, and should have been granted by

the officiating principal sudder ameen : that in pergunnah Lungla, in which respondents' talooka is situated, no talooka has lands in excess of the area recorded in the papers termed the moza-waree papers, while the extent of land sued for is in excess of the extent so recorded : that the ameen who was deputed to give possession in consequence of the auction sale, colluded with respondents, and measured the land secretly, and that had it been done openly objections would have been preferred : that part of parcel 23 has been decreed in favor of Government as unassessed, and settled with Sudfer Shah, with other immaterial matter.

The plea, that the extent of land claimed exceeds the quantity in the mozaawaree papers, is true, but of little weight, such excess being frequent : and the plea of collusion on the part of the ameen, who gave possession under the auction purchase, is immaterial to the issue, the chief question involved being not of possession, but of right, which collusion of the ameen cannot be deemed to have destroyed or even injured. But this question of right is by no means settled, the judgment of the officiating principal sudder ameen being a tissue of reasoning of the most inconclusive nature. It is not conclusive against the claim of Shuhur Banoo, appellant, to parcels 1, 4, 5 and 6, or the claim of Kishunkant, petitioner, to parcels 7, 12, 17, that these claims were not advanced while possession was being given under the auction purchase, for this objection is wholly neutralized by the plea of collusion and clandestine measurement by the ameen, nor can the alleged *possession* by the said petitioner be held cancelled by denial of his *right* to it by the collector. It is not conclusive against the claim of Shuhur Banoo to parcels 20 and 22, and the claim of Shoreshe Beebee, &c. to the same parcels, that they are conflicting, for one of them may be true. It is not collusive against the claim of Shuhur Banoo to parcels 18, 19, 20 and 21, that, in the decree in favor of Shoojat Mahomed they are found to be recorded as belonging to respondents' talooka, for Shuhur Banoo was not concerned in that decree, nor obviously is it any sufficient ground for pronouncing her claim to parcel 25 false, because it has been deemed false in regard to others, nor indeed is there any thing on record on which a final decree can be fairly founded, for all the evidence taken consists of the depositions of six witnesses, of whom three were called by and have deposed in favor of respondent, and three are, in like manner, on the side of appellants,—further, the investigation is imperfect, and the decree obviously unjust, in the important matters of mesne profits and costs. Appellants claim, under distinct titles, distinct parts of the land sued for, and both costs and mesne profits must be charged proportionately to the quantity of land which the parties sued may be found to have usurped, and the amount of mesne profits which they may be estimated to have appropriated, and can by no means be charged generally, in full, against the parties sued

until it be ascertained that they have conjointly usurped the full amount of land, and appropriated the full amount of mesne profits claimed by respondents. Thus, whether respondents' claim of right to the land, or the extent of possession by each of their opponents be considered, the case manifestly and imperatively demands a local investigation; and it should be ascertained by such investigation whether parcels 1, 4, 5, 6, 18, 19, 20, 21, 22 and 25 belong wholly, or in part, to respondents' talooka, and who has held possession of parcels 20 and 22, with such parts of parcels 4 and 21, as Shuhur Banoo denies holding: whether any part of parcel 23 has been settled with, and is in possession of, Sufder Shah, or any of the defendants; who has had possession of the parcels unclaimed by the defendants; and, lastly, what may be estimated as the mesne profits of the several parcels.

IT IS THEREFORE ORDERED,

That the decree of the officiating principal sudder ameen be reversed: that the case be remanded for re-investigation and decision: that the costs of this appeal be provided for by the principal sudder ameen in his future decree: and that the value of the stamp on which the petition of appeal is written be returned.

THE 12TH DECEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 74 of 1846.

Appeal from Hergowree Bose, Moonsiff of Russoolgunge.

Narainee Dibia, for herself and minor son, Appellant,

versus

Shewanund Surmah and others, Respondents.

APPELLANT sued for half the value of the oblations on the performance, on her behalf through her late husband's nephew, and by Shewanund Surmah and others as *Ugurdaanee* or *Ugursradee* Brahmuns, of the mortuary rite of the *Asrad* of Sherrun Gopal Adeekaree; the whole of which oblations had been appropriated by the said respondent, &c. though appellant was entitled to half.

Shewanund Surmah and three other Brahmuns answered, asserting, that Sherrun Gopal Adeekaree was the acquired *jujman*, or religious dependant of their father, without any participation of appellant's husband; and denying appellant's declaration generally.

The decree of the moonsiff, Hergowree Bose, sets forth that the witnesses have deposed each in favor of the party for which he was called, but that the exposition of the Hindoo law by the pundit of the Dacca division, shewed that there is no mention in the sacred books of *Jujunajun*, i. e., the reading and causing the reading of

the muntras, by Ugurdanee Brahmuns : that jujmans of Ugurdanee Brahmuns are unrecognized in the Shasters, and that, under such circumstances, the descendants of Ugurdanee Brahmuns had no hereditary right, as Kool Uprohits have, over persons seeking the performance of religious rites ; and on these grounds the moonsiff dismissed the claim.

Appellant now pleads that many similar claims by Ugurdanee Brahmuns have been decreed in their favor, by the several courts in this district, instancing the case of Rampershad Ugursadee *versus* Kasheenath Surmah and others, in which the zillah district pundit declared that the ruling power could compel payment of fees to an Ugursadee Brahmun ; and she adds, that possibly such Brahmuns are not held to be Uprohits where the present pundit lives, as they are in this district.

Two answers were given by the pundit of the district of Sylhet in exposition of the Hindoo law in the suit cited by appellant. The one sets forth that if an Ugursadee Brahmun shall have performed penance, in consequence of a Musulman having slaughtered a bullock which formerly belonged to him, he is entitled to the Puleet offerings, i. e. such offerings as are unlawful to Uprohits, but he has not the propriety or right which an Uprohit enjoys. The other declares that if an Ugursadee Brahmun who has attended the ancestors of a lay Hindoo shall perform penance for his fault, the ruling power can compel delivery to him of the Puleet rice to which he is entitled.

It is not proved to my satisfaction that appellant's agent was permitted to join in the rites on account of which a share of the offerings is claimed, for there arises strong presumption that had he joined the representative of the deceased jujman would have given him a share of those offerings, or, as he has been sued, have filed an answer admitting his claim ; and the exposition of the Hindoo law furnished by the pundit of the Dacca circle, which is as clear and conclusive as that of the district pundit above quoted is confused and inconclusive quoting no authority, shews that Ugurdanee Brahmuns are unrecognized in the sacred books of the Hindoos, and that they therefore have no such hereditary right as is claimed in the present suit.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and that the decree of the moonsiff be affirmed, with costs against appellant.

THE 16TH DECEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 7 of 1845.

Appeal from Sirinath Bidiabagish, Sudder Ameen.

Syuda Banoo, Shumaye Beebee, Sheo Kybert, Perma Kybert, Jya Kybert, Kala Kybert, and Nundee Kybert, Appellants,

versus

Ruttun Munee and others, Respondents.

RESPONDENTS sued for the rent of 3 koollas, 9 kears, 3 pao, 5 jet, 1 reg, in their conjoined talookas, talooka Mahomed Nazim No. 5, and Mahomed Unfur No. 6, of which possession had been given to them by an ameen of the civil court; claiming the said rent on talooka No. 5, from 1239 to 1250, and on No. 6, from 1242 to 1250 B. S.

Sheo Kybert, Perma Kybert, Jya Kybert, Kala Kybert, and Nundee Kybert, the cultivators, answered, denying the claim, and asserting that the land was situated in talooka Mahomed Nijat, the property of Shah Ubdool Kurreem, to whom they had paid their rent: that they have only occupied it since 1248 B. S.: that no ameen ever measured it, or required engagements from them: that they do not occupy the land jointly, but cultivate separate portions: that a summary suit was pending for the rent of 1250 B. S., which could not be sued for a second time; with other irrelevant matter.

Syuda Banoo and Shumaye Beebee, appellants, have filed answers, and Shah Ubdool Kurreem a petition, supporting the pleas of the cultivators, which respondents hold their title, and specifying the bed of a small stream as dividing the property of the claimant landholders.

Respondents, in their reply, observed that their present claim could only be affected by the summary suit, to the extent of the rent of 1250 being disallowed in this suit; and that Shah Ubdool Kurreem made no objection to the papers of the ameen who gave them possession of the land.

The sudder ameen, Sirinath Bidiabagish, has recorded that, from the enquiry of the ameen deputed to investigate the case, respondents' claim is made out: that though appellants have adduced evidence in support of their pleas, still the *chittah* or land roll of the ameen, deputed to give respondents possession of their talooks, shewed that possession was given of the land for which the rent is claimed, and that, until that possession was nullified by a suit for the purpose, it was sufficient to entitle respondents to the rent; and he accordingly decreed the claim against the cultivators, saddling the other appellants with their own expences.

Appellants now allege that the ameen deputed to investigate the present claim colluded with respondents, conducting his enquiry, and making his report, according to their wishes; and they also shew cause for discrediting the papers of the ameen sent out to give possession under the auction sale.

I find, in the first place, that respondents have been allowed rent on talooka No. 5, commencing at a more distant date than twelve years before the date of institution of this suit, but the excess should have been deducted in the decree of the sudder ameen: 2ndly, that though Syuda Banoo and Shumaye Beebee were neither cultivators of the soil, or proved to have been receivers of the rent, they have been, though otherwise exempted from liability under the decree, improperly charged with their own costs: 3dly, that the case requires further investigation. No evidence was adduced by either party before the sudder ameen; all that there is on record consists of the depositions, taken before the ameen, of four witnesses on the part of respondents, of three on the part of Syuda Banoo, &c., and of three other persons whom the peon in attendance on the ameen is represented to have brought, as living near the land of the disputed rent, and disinterested. But the ameen was not empowered, by the sudder ameen, to take evidence tendered by the parties, which is, as is usual, conflicting. He was directed to make a thorough enquiry into the case from neighbouring and disinterested persons, and all that he has done, in fulfilment of this order, has been to record the depositions of three persons brought by his attendant, which are not only unsatisfactory as being the evidence of only three persons, but are open to suspicion, as not being signed, by any of the appellants or their representatives. Under such circumstances, though I concur in the sudder ameen's opinion, that the land roll of the ameen, who gave respondents possession under the auction sale, must, under the law, be held conclusive *quoad* the question of possession, till set aside by a suit instituted for the purpose, still the cultivators' pleas, that they have only occupied since 1248, and do not occupy jointly, so that they should be sued as jointly liable, but cultivate separate portions, have met with none but most meagre and unsatisfactory investigation, and the suit must clearly be remanded for their elucidation.

IT IS THEREFORE ORDERED,

That the decree of the sudder ameen be reversed: that the suit be remanded for further investigation and decision: that the costs of this appeal be provided for by the principal sudder ameen, to whom the case will be transferred as the office of sudder ameen of Sylhet has been abolished: and that the value of stamp, on which the petition of appeal is written, be returned.

THE 18TH DECEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 5 of 1844.

Appeal from Syjud Abas Alee, late Principal Sudder Ameen of Sylhet.

Musumat Ditia, Appellant,

versus

Rughoonath Bunick, Surroop Manjee, Ram Nidee Shah, Goberdhun Shah and others, Respondents.

The late Ramkeshub Shah, husband of appellant, sued in the civil court of Dacca, to reverse the summary order passed, in appeal, by the judge of that district, and confirmed by the Sudder Dewanny Adawlut, disallowing his claim to two houses, the one situated in Seetalukea, of the district of Dacca, and the other in Julsooka, of the district of Sylhet, by purchase, on the 26th Bhadoon 1236, from Goberdhun Shah, Ramnidee Shah, Sadhoo Ram Shah, Soodam Ram Shah, Koosul Ram Shah, five brothers, owners of one moiety, and from Lalchund Shah, their cousin, owner of the other moiety of the said houses which have been attached, and one of which has been sold to Rughoonath Bunick, in execution of a decree obtained by Surroop Manjee against the said Ramnidee and Goberdhun.

Rughoonath Bunick, auction purchaser of the house in Seetalukea, denied plaintiff's purchase, and alleged that the house bought by him was erected by Ramnidee and Goberdhun, and was their property, with other immaterial matter.

Surroop Manjee, the decree holder, supported the preceding defendant, alleging that plaintiff's alleged purchase was fraudulent, to nullify his claim.

Mr. Reily, the principal sudder ameen of Dacca, adjudged 3 puns, 4 gundas to have been the extent of the interest of Ramnidee and Goberdhun in each house, and he released the remainder.

The late judge of Dacca, Mr. Cooke, in appeal from this decision, deemed the house in zillah Dacca proved to have been built by Ramnidee and Goberdhun, and altered the decree of the principal sudder ameen in regard to it, declaring it properly sold, while he annulled his subordinate's decision in regard to the house in Sylhet, on the ground of his (the judge) not having taken cognizance of the claim of appellant's husband to it in the summary proceedings, and having consequently left the order originally passed in those proceedings, which upheld the claim, untouched.

The present appellant, widow of Ramkeshub, then appealed to the Sudder Dewanny Adawlut, by which the preceding decrees

were quashed, and the suit was ordered to be tried in this district, where the more valuable part of the property claimed is situated, and the suit was accordingly transferred to this district.

The late principal sudder ameen of Sylhet, Syyud Abas Alee, after instituting a local investigation of the claim, concurred with the late judge of Dacca in adjudging the house in the Dacca district to have been built by, and to have been the property of, Ramnidee and Goberdhun, and with the principal sudder ameen of Dacca, in holding 3 puns, 4 gundas, to be the extent of the interest of those individuals in the house in zillah Sylhet, and he accordingly dismissed appellant's claim to the Dacca house *in toto*, and ordered 3 puns, 4 gundas, of the house in this district to be subjected to sale, under the decree held by Surroop Manjee.

Appellant, dissatisfied, now pleads that Luckoo Rai, father of Lallchund Shah, and Hurree Rai, father of Ramnidee, Goberdhun, and their three brothers, built the house in this district for their residence, and that in the Dacca district for the purpose of trading, with their joint funds: that the sellers to her husband are all heirs of Luckoo Rai and Hurree Rai, and that the *bona fide* purchase by her husband, previously to the date of the decree held by Surroop Manjee, is proved; and she prays for release of the two houses.

The principal sudder ameen of Sylhet has erroneously supposed that the judge of Dacca declined to pass an award on the claim of the house in this district, on the score of not having jurisdiction, for the refusal is distinctly grounded, in the decree of the latter officer, on the circumstance of no cognizance having been taken by him of such claim in the summary proceedings; this refusal, however, is clearly based on insufficient grounds, for though the reasoning of the judge applies only to the house in Dacca, the claim to *both* houses is recited in his proceedings and rejected *in toto*—so that appellant's claim to the house in this district cannot be deemed, on the ground taken by the Dacca judge, to have been needlessly advanced in the present suit, but must be disposed of on its merits.

The purchase of appellant's husband does not appear to me, on grounds which I need not recite, as the suit is not in my opinion ripe for a final decision, to be a *bona fide* transaction, but, as it is not impugned by any of the sellers, and the suit appears to have been preferred with their connivance, it must of course be upheld to the extent of the interests of such of them as are not liable under the decree obtained by Surroop Manjee: but the rights of ownership in the Dacca house do not appear to me to have been duly elucidated by the principal sudder ameen: that officer should in my opinion have directed his attention to the question whether Ramnidee and Goberdhun were, at the time the said house was built, *humsaam*, or messing with, their relations above-named, or

not, for if they were, it is, according to the customs of the country, a plain presumption of fact that the house in Dacca was built with the joint funds of the family, and the reverse if otherwise. Under such circumstances the investigation of the principal sudder ameen is deemed imperfect.

IT IS THEREFORE ORDERED,

That the decree of the late principal sudder ameen be reversed ; that the suit be remanded ; that the value of the stamp on which the petition of appeal is written be returned ; and that the principal sudder ameen do pass a proper order in regard to the remaining costs of this suit.

THE 18TH DECEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 114 of 1845.

Appeal from Gholam Imam, Moonsiff of Latoo.

Herjeeewun Pal and Manickram Das, Appellants,

versus

Gouree Chunder Pal and others, Respondents.

RESPONDENTS sued, stating that talooka Rughoo Ram was originally formed, as No. 16, in pergunnah Punjkund Kulam, comprising, according to the mozawaree papers, 173 koolbas, 10 kears, 2 pao, 6 jet ; that in the year 1200 B. S., 86 koolbas, 11 kears, 1 pao, 3 jet were sold to one Alee Reza, and entered separately in the collector's books, as talooka Alee Reza, No. 634 ; that, subsequently, the lands of mouza Gangnee underwent formal partition, while the remaining lands of the talookas continued to be held, in separate portions, by the proprietors, without any written deed of division ; that Syyud Moosa, &c. purchased talooka Alee Reza, obtained possession, and sued for a division claiming 95 koolbas, 1 kear, 2 pao, 3 jet as their share of the actually existent quantity of land proportionate to the share of revenue paid by them, obtaining, on the 27th of November 1821, a decree from the sudder ameen, who directed that an ameen should be deputed, who should measure the lands of the two talookas, and, after excluding the khanabaree land, divide the remainder, upholding, as much as possible, the possession of the parties and equalizing it ; that, before this decree was executed, talooka Alee Reza was sold, for arrears of Government revenue, in 1244 B. S., and purchased by Rutteekant Surmah, who sold 2 koolbas of it to Ramlochan Rai, and the remainder, in Poos 1245 B. S., to respondents, subsequently, in 1247 giving them a chitta, or roll, of the land transferred to their possession, comprising 84 koolbas, 3 kears, the difference to which they were entitled, i. e. 8 koolbas, 10 kears, 2 pao, 3 jet, being withheld by appellant, &c. ; they also notice that

Manick Ram and Chundee Dasee sued for $\frac{1}{4}$ d of talooka Rughoo Ram, obtained a decree for it, and took out an ameen to give them possession, who, in consequence of no regular separation of talooka Rughoo Ram and Alee Reza having taken place, has included in his schedule of lands of the former lands of the latter talooka; and they finally pray for a regular division of the two talookas by equalization of the lands in each, with refund of the mesne profits from 1245 to 1250 B. S.

Herjeewun Pal alleges, in his answer, that the lands of the two talookas are separated by private partition: that none of the lands of talooka Alee Reza are in the possession of the proprietors of talooka Rughoo Ram, as Gouree Churrun Pal, respondent, admitted in the suit instituted by Syud Moosa, &c. that Gouree Churrun collusively obtained from Ruttekant a land roll signed by the latter, and including some of the land appertaining to talooka Rughoo Ram, and sued Gournarain, declaring that he was in full possession of talooka Alee Reza.

Manickram Das filed an answer in support of the answer of Herjeewun Pal.

Deedar Mahomed, Pursah Oollah, *alias* Sheik Punnia, Mahomed Kulleem, Danish Mahomed, Ameer Oollah, Sheik Sunaye, Sheik Suleem, Shere Mahomed, Sheik Eenaye, Roopye Gazoor, Gooloo Gazoor, Nowaz Mahomed, Basir Mahomed, Bahadoor Khan, Ufzul Mahomed, Azoo Khan, Leydoo Khan, Ahmud Alee, *alias* Ahmudee Meari, Saboo Ram Das, Sheik Doona, and Sheik Muttaye, declared themselves, in their answers, purchasers of parcels of land in talooka Rughoo Ram.

Herjeewun Pal the 2nd, Ramjeewun Pal and Bishenjewun Pal, plead, in their answer, that respondents have usurped possession of lands belonging to their talooka Hurree Ram Pal No. 8.

Syyud Sufdur, Syyud Muzuffer, and Syyud Deelal, in their answers, represented the lands of the two talookas, "Rughoo Ram" and "Alee Reza," to be distinct and separate.

The decree of the moonsiff, Gholam Imam, directs that the lands of the two talookas, with the exception of mouza Gangnee (declared to have undergone partition,) and the khanabaree lands (which were reserved when half of talooka Rugho Ram was sold to Alee Reza), be measured; that the possession of the proprietors in chief be upheld as far as possible; that the parcels sold as talooka Rugho Ram be included in the share of the sellers Gouree Churrun Pal (respondent) and Herjeewun Pal (appellant); that the lands decreed to Manickram Das be respected; that whatever extent Herjeewun Pal, Manickram Pal, and Urnopoorna Dasee, widow of Bhowanee Churrun Pal, might be found to hold in each village, in excess of their right, be given to respondents, and any excess in possession of the latter to appellants; with mesne profits and interest from the time of dispossession to the time of regaining the

same; and that respondents' costs be defrayed by the defendants holding possession in excess.

Appellants now plead that, under Clause 3, Section 17, Regulation XXIII. of 1814, specification in the plaint of the dispossession was necessary; that, under Section 5, Regulation XIX. 1814, a butwara, or partition, which does not include the lands of mouza Gangnee, the khanabaree lands of talooka Rughoo Ram, and those purchased by Ramlochun, is impracticable; that the suit is not tenable, as the heirs of Gungapershad, a co-sharer, and of Siribullubh, a purchaser of part of talooka Rughoo Ram, have not been sued; and that under Construction No. 1046, the value of the property under litigation has been wrongly estimated, as no fixed proportion of it is assignable to the land purchased by Ramlochun Rai, with other matter.

But the suit is for butwarah under title acquired in 1245, from which time possession is alleged to have been withheld, and such specification appears to me sufficient to satisfy the exigencies of the law in this respect. The return of the collector to the requisition of this court shews that talooka Rughoo Ram originally comprised 173 koolbas, 10 kears, 2 pao, 6 jet, paying revenue to the state 125 kawuns of couries, and that the khanahbaree lands were reserved, and half of the remainder *kharifa*, or separated, with allotted liability for half the revenue, as talooka Alea Reza, and that there is no record of partition by measurement; moreover the decree obtained by Syyud Moosa and others, proprietors of Alea Reza, against Herjeewun Pal, appellant, and others, proprietors of the residual part of talooka Rughoo Ram, is in accordance with these particulars; and, under such circumstances, I am of opinion that neither the revenue authorities, who have allowed the separation of half the land of the original talooka Rughoo Ram, with reservation of the khanahbaree land, and have sold such separated portion, with its allotted jumma, to the person who sold to respondents, nor appellants, who acquiesced in the judgment given in the suit of Syyud Moosa, &c., can now object to accomplishment of the butwarrah, on plea of the khanahbaree land being reserved as stated. Further there is no prayer in the plaint that mouza Gangnee be excepted from the partition, that it should be held to obstruct respondents' claim, and the heirs of Ramlochun have been sued, and have made no objection, and, indeed, had they made any, it is difficult to conceive how it could prevent respondents from obtaining their distinct and separate rights. In my judgment, then, respondents have shewn a *prima facie* right to a separation by measurement of the lands of talooka Alea Reza, and it must, I hold, be effected through the collector. The plea of misvaluation of the claim is not deemed by me a bar, as the suit is for separation of the entire talooka, and the valuation is at three times the amount of revenue payable for it; and whether the heirs of Gungapersaud and

Siribullabh are in possession, requires investigation; moreover before this suit be decided, it is necessary, in order to dispose of the claim to mesne profits and consequent apportionment of costs, that the land in the possession of the litigant parties be ascertained; and for this purpose the suit must be remanded; but, as the case in execution of the decree of Manick Ram *versus* Gouree Churrun Pal, has been remanded, in appeal (No. 287) from the orders of the principal sudder ameen, and the two cases involve claims to the same property, and therefore cannot conveniently be disposed of by separate courts,

IT IS ORDERED,

That the decree of the moonsiff of Latoo be reversed, and that the suit be remanded and transferred to the court of the principal sudder ameen, who will cause the investigation contemplated above to be made by Rujwan Alli, his surishtahdar, whom Gouree Churn, respondent, and Manick Ram's vakeel, in the said case of execution of the latter's decree, approved of as an ameen, and will pass a proper order, providing for the costs of this appeal. The value of the stamp on which the petition of appeal is written is to be returned.

THE 19TH DECEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 1 of 1844.

Appeal from Syjud Abas Alee, late Principal Sudder Ameen.

Ramgobind Mujmoodar and others, Appellants,

versus

Bishnó Churn Das and others, Respondents.

RESPONDENTS sued as nearest of kin to Rajkishun Das, the deceased husband of Rajessuree, for possession of the deceased's landed estate, and to cancel the sale of the same by the widow.

Ramgobind and Gopal Kishun answered that they had purchased the estate, in the name of the former, from the widow, who had sold it to pay her husband's debts, to defray the expence of his obsequies, and to provide for her own maintenance.

Rajessuree filed an answer in conformity with that of Ramgobind and Gopal Kishun.

The principal sudder ameen, Syjud Abas Alee, declared the sale void, because the pecuniary embarrassments of the husband had not been proved, and because Rajessuree was a minor at the time of sale, and he directed that she should retain possession of the estate during her life.

Ramgobind, Gopalkishun, and Rajessuree appealed to this court, but, being held to have had ample opportunity of establishing their pleas before the principal sudder ameen without producing any evidence in support of them, the decree of the lower court was affirmed.

On special appeal, by Ramgobind and Gopalkishun, to the Sudder Dewanny Adawlut, the case was remanded, and this court was directed to afford to the appellants opportunity of establishing by evidence, oral and documentary, the facts asserted by them, viz. that the estate was sold to them in order to discharge the debts of Rajkishun, to defray the expence of his obsequies, and to provide for his widow's maintenance.

In furtherance of these orders, appellants were called on to produce such evidence, oral and documentary, as they might wish to present, and they filed a list of nine witnesses, seven of whom have been examined, the remaining two being a person who signed the deed of sale to Ramgobind, and whose attendance has been declared by appellants' vaqueel unnecessary to their case, and a person named as the gomastah of a deceased creditor, whom their vaqueel, on the 25th August last, agreed to bring into court within ten days, but who has not been produced.

Of the seven witnesses who have been examined, two were brought to prove the execution of the deed of sale, which is not denied, while, of the remainder, four were summoned to prove that the debts of Rajkishun, and one that the expences of his obsequies were liquidated by the proceeds of the sale to Ramgobind, and no further evidence has been offered by appellants.

These five last witnesses have sworn to the leading points which they were called to prove, with a consentaneousness of knowledge which, contrasted with their ignorance on other points, is extremely suspicious. Each swears to a debt to himself: that there were debts to others: that the only way of paying them was by selling the estate: that the estate was sold on account of the debts, and that the proceeds were devoted to their liquidation. But it is observable, first, that Khyroollah, witness, who represents himself as having shewn a strange unhesitating willingness to relinquish some of the land subsequently purchased by appellants, (for which he had paid Rajkishun 105 rupees out of the price 125 rupees,) on Rajessuree's stating that she wished to sell the whole estate to a single person, when cross examined by respondent's vaqueel, was unable to specify a single boundary of the land which he states himself to have bought; secondly, that Golab Ram, witness, on being cross examined, states that he was creditor without a bond, and then with one, and that he is unable to recollect the name of a single witness to it, though he has expressed remembrance of other minor circumstances, and moreover, this witness admits himself to be nephew-in-law to Rammohun,

defendant ; thirdly, that Sodaram, witness, has admitted that he has already given evidence in another case on the part of Ramgobind, appellant, and that, when the son of the latter went to Calcutta, to prosecute the appeal to the Sudder Dewanny Adawlut, he, the witness, accompanied him—but only for the purpose of bathing in the Ganges ; fourthly, that Rampershad, witness, who represents himself as having supplied certain articles for the obsequies of the deceased, and to have been paid out of the proceeds of the sale, has admitted himself to be a disciple of Ramgopal (his Goorodeo) who is sued as colluding with appellants, and his evidence is otherwise suspicious, for he admits that he never went to Rajkishun's house, and does not even know it—moreover witnesses on the part of respondent have sworn that the expences of the obsequies were defrayed, partly by the respondents, and partly by the rent of the deceased's land, and their evidence appears to me preferable to the testimony of this solitary and suspicious witness ; fifthly, that Munnee Ram, who has been admitted by respondents, in their replication to Rajessuree, to have been a creditor to the extent of 45 rupees, which amount is not contested in appellant's rejoinder subsequently filed, swears that he was owed 50 rupees, without a bond, and that he was paid 75 rupees, two or three years after the death of Rajkishun, by Ramgobind, with whom the money had been deposited for the purpose : but no good reason is given why he was not paid at the time, or why the deposit stated was made : appellants in *their* answer do not mention it, and Rajessuree, in *her's*, filed when she was confederate with appellants, directly contradicts it, alleging that the money was paid by her to the creditors, so that, though there can be little doubt that this creditor has been satisfied by appellants, much hangs over the assertion that he was paid from the price of the land, and also over the time of payment, as, had it been paid at the time stated by this witness, appellants would assuredly have been able to shew a stamp receipt of that period, for it cannot be supposed that they would have paid seventy-five rupees without taking one ; sixthly, that the inaccessibility of all the witnesses to some of the alleged transactions is remarkable—Golab Ram cannot remember any of his, while those of Khyroollah and Soda Ram are dead, and the vitality of these two last *quasi* creditors, and the mortality of their witnesses, are in strange contrast, and the suspicion is irrepressible that the witnesses of Golab Ram are not named because they never existed, and that those of Khyroollah and Soda Ram are named because dead men can tell no tales ; seventhly, that had the estate been *bona fide* sold for the purposes asserted, appellants would have secured the alleged cancelled bonds of Golab Ram and Soda Ram, and, especially, the deed of sale, which Khyroollah has sworn that he returned to Rajessuree. It certainly may be objected, but I think with little reason, that the two former

were more necessary to be retained by Rajessuree, than by appellants, but this objection cannot hold good in respect to the deed of sale, which, if it ever really existed, was *essential to the integrity of appellant's title*, and which, not having been secured by them can, in my opinion, have existed only in imagination; further it may be noticed, that the reply of appellant's vaqueels, recorded in my proceedings of the 5th of November last, that the cancelled documents were not called for before Rajessuree had quitted *their* client's party, is incorrect, as they are shewn to have been demanded in the principal sudder ameen's proceedings of the 6th of February 1844, which was before Rajessuree went over to respondents, as she joined appellant in appealing from the decree of the principal sudder ameen, to this court; and lastly, it may be observed that no account books have been produced.

Much more might be stated, but enough appears to have been recorded to shew, that the evidence adduced by appellants is wholly unworthy of reliance; their pleas are thus not established, and the sale by the widow, even granting that she was not a minor at the time, cannot, according to numerous precedents, be upheld, under the Hindoo law, as a valid transaction.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and that the decree of the late principal sudder ameen be affirmed, with costs of appeal against appellants.

THE 19TH DECEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 5 of 1844.

Appeal from Sirinath Bidiabagish, late Sudder Ameen.

Mahomed Kayem and Mahomed Shugreef, Appellants,

versus

Mahomed Kuleem, Respondent.

RESPONDENT sued, stating himself proprietor by inheritance, and according to certain deeds of adjustment and partition, of $\frac{5}{16}$ ths of talookas Adum Khan and Mahomed Nazim, of $\frac{6}{16}$ ths of talooka Gool Mahomed, and $\frac{8}{16}$ ths of talooka Mahomed Dowlut, and that he was dispossessed of 12 koolbas, 7 kear, 1 pao by appellants and others, gradually from 1237 to 1244 B. S., praying that he might be reinstated in possession of the same, and that the mesne profits of it might be refunded to him.

Appellants answered that respondent was only entitled to $\frac{4}{15}$ ths of the said talookas, and that he was in full possession of his share.

The late sudder ameen, Sirinath Bidiabagish, decreed that respondent should recover from appellants,

koolbas. kear. pao. jet. reg. pun. gs. cs.

4 10 „ 3 2 3 13 3 in talooka Adum Khan
and Mahomed Nazim.

„ 1 1 5 1 1 17 2 in talooka Gool Mahomed

and „ „ 1 2 0 1 10 „ in talooka Mahomed

Dowlut, with 265 rupees, 9 annas, 11 gundas, 2 cowries, mesne profits, together with costs and interest.

After appeal to this court, the parties filed petitions, praying that Gholam Hyder Chowdree might be appointed arbitrator between them, binding themselves to abide by his award; and the case was accordingly referred for arbitration.

The award is that respondent do receive from appellants 3 koolbas, 1 kear, 2 pao, 2 jet, 1 pun, 2 gundas, 2 cowries of land, with 210 rupees, 10 annas, 10 pie, mesne profits.

Appellants now object that respondent is nearly related to the arbitrator: that the arbitrator wanted them to give him, without price, a share in the Alléegunge Bazar, or to give respondent a conveyance similarly without price, of 5 koolbas, 6 kear of land, recently settled with them by the collector: and that he has acted partially, by including, in his measurement of the talookas in which respondent is a sharer, land of other estates to which he has preferred no claim.

The parties are themselves related, and therefore appellants must have known the relationship existing between Gholam Hyder and respondent, before they appointed the former arbitrator, and the only question to be considered is whether he has acted with partiality.

Proof of partiality was called for from appellants, and they filed a list of five witnesses, four of whom have been examined before this court.

These witnesses, have not, in the slightest degree, supported appellant's statement that the arbitrator required them to give him a share in the Alléegunge Bazar; and the evidence in regard to the transfer of the newly settled land is, that the transfer was proposed as a mode of settling the differences between the parties, and one of the witnesses, Khoda Nowaz, has specifically stated that execution of a conveyance of that land was suggested by Mahomed Shurreef, appellant, in consequence of the said land not being part of that which was subject to arbitration; and, while three out of the four witnesses have absolutely denied knowledge of partiality

in the arbitration on the part of the arbitrator, the fourth, a person of a low rank in life, has merely deposed that he had heard others say that partiality had been exhibited. But proof of partiality cannot rest on such loose hearsay evidence, for the law provides that an award, such as the one under consideration, shall not be set aside saving on satisfactory proof of corruption or partiality by the oaths of two credible witnesses, and as corruption has not been charged, and four out of the five witnesses, named by appellants have denied knowledge of partiality, it is obviously useless to wait for the fifth, who is absent.

IT IS THEREFORE ORDERED,

That the decree of the late sudder ameen be superseded: that the award of the arbitrator, which appears to me to have been given with strict impartiality, be executed: that the costs in both courts be charged in proportion to the property now decreed, with interest, on the mesne profits and costs, to the date of realization—the interests of the third party, who intervened as an objector, not being prejudiced by this order. •

ZILLAH TIPPERAH.

THE 3D DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 248 of 1846.

Regular Appeal from a decision of Gopeenath Moetro, Moonsiff of Soodharam, dated 1st September 1846.

Koresh, (Defendant,) Appellant,

versus

Rammanick Sirdar, (Plaintiff,) Respondent.

Suit laid at Company's rupees 145-15-11-18.

THIS was an action for the recovery of the sum of Company's rupees 120-4, (with interest,) under an instalment bond executed by the appellant in favor of George Ley (deceased), and transferred to the respondent by Ley, on payment of the amount by respondent.

The representatives of Ley were made defendants along with the appellant, but they did not appear to defend the suit, and a decree issued against the appellant alone.

As the merits of the case cannot be properly investigated without the attendance of Ley's representatives; and as, from the manner in which process against them is said to have issued, it is evident that neither the prescribed notice nor the proclamation was taken to their place of residence, the witnesses being inhabitants of only one out of three villages named in the different processes, and bearing witness to the issue of process in the interior of the district, while the residence of Ley's representatives is stated, both in the plaint and in the processes, to be in the town of Soodharam, the moonsiff's decision is reversed, and the suit remanded for investigation and decision on its merits, after issue of process on the parties conformably to law and the practice of the courts. The appellant will receive back the value of the stamp on which his petition of appeal is engrossed.

THE 4TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 250 of 1846.

Regular Appeal from a decision of Rajnarain Mookerjee, Moonsiff of Nassirnuggur, dated 8th September 1846.

Kanoo Nath, (Plaintiff,) Appellant,

versus

Leba Nath, (Defendant,) Respondent.

Suit laid at Company's rupees 32.

THIS was an action for damages for loss of character, in consequence of exclusion from a marriage feast.

The moonsiff dismissed the case on the ground that the evidence adduced by plaintiff was insufficient, and that the defendant's plea, viz. that plaintiff had been excluded from participation in the feast, by people of his own village, then present, was established by the evidence of witnesses named by both parties conjointly.

Nothing new is advanced in appeal, and there is no reason for interfering with the decision of the lower court. The defendant was presiding on the occasion of the marriage of his brother, and was, probably, for that reason made the defendant in this case; but he would not appear to have acted with any harshness or malice; and, even had he done all that was attributed to him, his conduct could never have supported an action for damages. He was told that the plaintiff had been excluded from the society of those of his own caste, among his neighbours; and such being the case, he could not compel any one else to admit him (plaintiff) into their society.

The appeal is dismissed, without summoning the respondent.

THE 4TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 251 of 1846.

Regular Appeal from a decision of Gopeenath Moetro, Moonsiff of Soodharam, dated 17th August 1846.

Birjoram Manjee, (Defendant,) Appellant,

versus

Ajidapersaud Tewarry, (Plaintiff,) Respondent.

Suit laid at Company's rupees 62-12.

THIS was an action for the recovery of the value of 55 maunds of rice, deliverable to the plaintiff by the appellant and another, in consideration of an advance of 22 rupees.

On the 24th March last, the suit was remanded for re-investigation, owing to an irregularity in the issue of process for the appearance of the defendants. After it was replaced on the moonsiff's file, and one of the defendants had appeared by vakeel, the court held that, as the other defendant had not appealed against the previous decision, it was unnecessary to take any steps with a view to his attendance now. The case was therefore decided *ex parte* as regards one of the defendants, but a decree was passed against them both. It appears from the record, that when the case was first received for re-trial, a former moonsiff ordered a notice to be served on both defendants; and that a return was made to the effect that both had appeared; but, as the present moonsiff declared that any such notice was not necessary, and gave that reason for not calling on them both to appear, either the notice issued

by the former moonsiff was overlooked by his successor, or it had not been filed with the papers of the case when judgment was passed.

The course of procedure followed by the lower court being irregular and opposed to justice, the decision must be reversed, and the case again remanded for trial on its merits, after the issue of process against both the defendants, who are equally interested in the suit. The value of the stamp on which the petition of appeal is written, will be refunded.

Certain irregularities in the mode of recording his proceedings, will form the subject of a separate reference to the moonsiff.

THE 5TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 180 of 1846.

Regular Appeal from a decision of Mahomed Amah, Moonsiff of Ameerghaon, dated 18th June 1846.

Dabee Churn Deo and another, (Defendants,) Appellants,

versus

Mahomed Kamal, (Plaintiff,) Respondent.

Suit laid at Company's rupees 42.

THIS was an action for the value of 300 cottahs of rice, under a contract entered into by the defendants in favor of the plaintiff, in consideration of an advance of 21 rupees.

The defendants admitted the execution of the deed filed by the plaintiff in support of the claim, but pleaded that the transaction was in reality a money one, and that the money advanced had been repaid. They adduced however no proof in support of their pleas, and the moonsiff gave a decree for the amount of the advance, with interest from the date of the transaction.

In appeal, it was urged that the plaintiff's witnesses were not to be believed; that their evidence contained discrepancies; that it was not credible that a contract of the kind would have been entered into for so short a period as three days; and that sufficient time had not been allowed for the production of proof by the defendants.

The plaintiff was entitled to a decree for the value of the rice contracted for; but, as he does not appeal, no reason exists for interfering with the decision, on that account. The proceedings in the lower court were quite regular, and the evidence of the plaintiff's witnesses is open to no objection. The appeal is therefore dismissed with costs.

THE 5TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 181 of 1846.

Regular Appeal from a decision of Mahomed Amah, Moonsiff of Ameer gaon, dated 27th June 1846.

Chowdry Ghaen, (Defendant,) Appellant,

versus

Kallee Churn Nath, (Plaintiff,) Respondent.

Suit laid at Company's rupees 31.

THIS was an action for damages for assault and defamation.

A decree was given for the plaintiff on the 27th June, without any evidence having been taken for the defendant, but it appears, from the record, that on the 24th, i. e. three days before the date on which the case was decided, the plaintiff had been allowed five days for the attendance of one of his witnesses whose examination had been commenced but not concluded, and that the defendant was allowed a similar indulgence for the production of his witnesses. The plaintiff's witness appeared on the 27th instant, but that part of the order of the 24th which related to the defendant's witnesses, seems to have been overlooked; and judgment was passed without their being examined, and two days before the expiration of the period allowed for their appearance. The appellant states that they were in attendance on the 27th instant; if such were the case, it was, no doubt, after the suit had been decided.

Under the circumstances, the suit must be remanded for re-trial, a reasonable period being allowed for the attendance of appellant's witnesses.

The value of the stamp on which the petition of appeal is engrossed will be refunded.

THE 7TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 188 of 1846.

Regular Appeal from a decision of Moonshee Rumutoolla, Moonsiff of Juggernath Diggy, dated 29th June 1846.

Alam Gazee, (Defendant,) Appellant,

versus

Kuleemooddeen Khonkar, (Plaintiff,) Respondent.

Suit laid at Company's rupees 14-4-6-16.

THIS was a suit for the value of 100 cottahs of rice, at the present market rate, deliverable to the plaintiff by the defendant, in

Poos 1252 B. S., in consideration of an advance of Company's rupees 7, made in Srabun of the same year.

No documentary evidence of the contract existed, but the plaintiff proved his case by the evidence of five witnesses.

The defendant denied the transaction *in toto*, and pleaded, 1st, enmity on the part of the plaintiff, arising out of a previous dispute regarding a claim to rent for some lakheraj land in the plaintiff's occupation; and 2ndly, that plaintiff's real object in bringing the suit was the embezzlement of a silver ornament pledged with his niece by the defendant. No attempt, however, was made to prove the pleas, and the moonsiff gave a decree in favor of the plaintiff.

Nothing new having been advanced in appeal, and no reason existing for interfering with the decision of the lower court, the appeal is dismissed with costs.

THE 7TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 189 of 1846.

Regular Appeal from a decision of Deenobundhoo Chowdry, Moonsiff of Toobkibagrah, dated 29th June 1846.

Joy Chunder Soom, (Defendant,) Appellant,

versus

Esur Chunder Chund, (Plaintiff,) Respondent.

Suit laid at Company's rupees 13-7-5.

THIS was a suit for the reversal of a summary award under Regulation VII. of 1799.

Plaintiff is the occupant of a betel-nut baree or garden, in a Government khass mehal in pergunnah Sugdee: the defendant holds a farm of the estate from Government.

Up to the year 1250 B. S. inclusive, no dispute as to the amount of rent payable by plaintiff, appears to have existed; but in 1251 he was called upon by the collector to enter into engagements at an advanced rent, agreeably to the result of a detailed measurement of the estate, and the rates adopted by a deputy collector. His brother attended at the collector's office, with the intention of taking out a pottah or lease; but, finding that the rent of the garden had been raised from rupees 5-2 to rupees 11-4, he presented a petition against the new assessment, as being exorbitant, and tendered his resignation of the land. The petition was ordered to be filed; but the resignation was neither formally accepted nor refused.

The plaintiff was sued by the defendant, under Regulation VII. of 1799, for rent for 1251, at the new rate recorded in the collector's papers, viz rupees 11-4; but, though he pleaded the previous

resignation of the land, in bar of the claim, a decree issued against him for the full amount, the deputy collector by whom the suit was tried holding the resignation not to be valid, because it had not been tendered to the farmer as well as to the collector. The moonsiff modified this summary award, on the ground that, as the provisions of Sections 9 and 10, Regulation V. of 1812, had not been complied with, no higher rent was exigible or recoverable by suit in court, than the plaintiff was bound to pay under his previous engagements. And, as it was proved by receipts for the year 1250, verified by the defendant's gomashlah or agent, that the rent for that year had been rupees 5-2, he passed a decree at that rate, instead of at the rate awarded by the revenue authorities. The defendant stated that the former rent was 8 rupees, but no evidence was adduced to prove that it was so.

I cannot admit the validity of the whole of the moonsiff's reasoning; for he declares the resignation to be of no effect, seeing that the petition was presented, not by the plaintiff himself, but by his brother; whereas it is sufficient that it was presented on the plaintiff's behalf: but, in other respects his decision is unobjectionable; at all events there is no cause for interfering with it; for nothing new or in any way calculated to impugn its equity is advanced by the appellant; and, although it might have been a question whether the resignation of the land did not furnish a ground for releasing the respondent from all liability, the fact that he was in possession, is not denied in appeal, nor did he prefer an appeal against the decision of the lower court.

The moonsiff's decree is therefore affirmed with costs.

THE 8TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 244 of 1846.

Regular Appeal from a decision of Mahomed Amah, Moonsiff of Ameergaon, dated 27th August 1846.

Asbuck, (Defendant,) Appellant,

versus

Kirteenaarain Seal, (Plaintiff,) Respondent.

THE respondent and two others, Mussumaut Jussee and Kishore Dhobee, in a suit for possession and mesne profits, obtained a decree against the appellant.

As the appellant, in his petition of appeal, has omitted to name, as respondents, the two last named plaintiffs, the appeal must be rejected as incomplete, under Circular Order No. 211 of the 1st July 1842.

THE 9TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 198 of 1846.

Regular Appeal from a decision of Gopeenath Moetro, Moonsiff of Soodharam, dated 31st July 1846.

Mussumaut Rutten Banoo, (Plaintiff,) Appellant,
versus

Manick, Mussumaut Phool Beebee, and another, (Defendants,) Respondents.

Suit laid at Company's Rupees 60-6.

THIS was a suit for possession, under the Mahomedan law of inheritance, of a $3\frac{1}{2}$ annas share of a subordinate tenure in the Bullooah zemindaree.

The plaintiff sues as heir of her father Matoo Jummadar, and states that she was in possession up to 1252: the defendant Manick pleads acquisition of the entire tenure by deed of *hiba-bil-uwuz*, or mutual gift, from Assadoollah the last proprietor; and denies that plaintiff ever was in possession.

The case was dismissed on the ground that suit was barred by lapse of time; that plaintiff's claim was not proved; that the defendants had established their pleas; and that, under Circular Order No. 20 of the 29th June 1809, the suit was liable to dismissal.

As the case must be remanded, it is not necessary to enter into the merits of the respective claims, further than to declare 1st, that, inasmuch as the plaintiff states that she was disseised by the defendants in 1252, that date, and not the date of the deed of gift filed by the defendants, must be taken as the period from which to calculate whether or not suit be barred by lapse of time, unless it be proved, after regular investigation, that plaintiff's statement as regards the fact of possession, is incorrect, and 2ndly, that the Circular Order of the 29th July 1809, is not applicable to this case, for, although that order prohibits the institution of suits under fictitious names, it in no way affects claims of inheritance simply because the tenure in dispute is said to have been purchased by an ancestor in the name of another.

Plaintiff being a female, and the principal defendant her brother, it was not to have been expected that the title deeds would be with her; but she named 19 witnesses to prove her case, and stated that she was ready to produce documentary evidence of possession.

On the 14th, 15th, and 16th May, five of her witnesses were examined: on the 1st, 2nd, and 3rd June, the evidence of certain of the defendants' witnesses was taken: on the 3rd June, the

moonsiff died; and from that date to the 27th July, the office of moonsiff was vacant; but on the 31st July the suit was taken up and dismissed by the new moonsiff, without the plaintiff having been allowed an opportunity of causing the attendance of her remaining witnesses.

On the 20th June, the officer in charge of the current duties of the moonsiff's court held a proceeding in which he ordered the parties to bring their witnesses; but as, under Circular Order No. 156 of the 6th November 1835, although empowered to "receive lists of witnesses," such officer cannot take evidence without "urgent reason," and even then, not without special instructions from the judge, the proceeding of the 20th June must be held to be of no effect. As parties to suits could not be expected to keep their witnesses in attendance until the arrival of a successor to the late moonsiff; and further, as there is reason to suspect that the donor's name in the deed of gift, has been changed, it is necessary for the ends of justice, that the plaintiff should have an opportunity of bringing forward her remaining witnesses, and of filing her documentary evidence.

The suit is therefore remanded for re-trial, in order that the parties may be allowed a reasonable period for the production of their witnesses, and any exhibits they may wish to put in. The value of the stamp on which the petition of appeal is written will be refunded.

THE 10TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 21 of 1846.

*Regular Appeal from a decision of Moolay Mahomed Ali, Principal
Sudder Ameen, dated 10th August 1846.*

Musst. Mahamya, widow of Kishen Kishore Chukerbutty and mother of Balaram Chukerbutty, a minor, (Plaintiff,) Appellant,

versus

Seeb Chunder Rai and Musst. Bhugawatty, (Defendants,) and Henry Roe (Claimant,) Respondents.

Suit laid at Company's rupees 323-13-10.

THIS was a suit for possession of the undermentioned shares of pergunnah Goonanundy, and three independent talooks in pergunnah Mohubutpore, mortgaged to Kishen Kishore Chukerbutty deceased, on the 21st Chyte 1242 B. S. for a sum of Sicca rupees 400, and redeemable within seven years—the mortgage having already been foreclosed.

A 2 annas 15 gundas share of the 10 couree share of pergunnah Goonanundy, proportion of sudder jumma,	Sa. rupees	10	9	12	2
A 2 annas 15 gundas share of talook Nuruttum Mujoomdar,	Ditto ditto	80	15	12	0
A 2 annas 15 gundas share of talook Ramchurn. Mujoomdar,	Ditto ditto	1	8	15	0
A 8 annas share of talook Dhurum Narain Singh,	Ditto ditto	8	2	0	0

Total Sicca rupees..... 101 3 19 2

The defendants did not appear, either in the lower court or in appeal.

The claimant appeared as the real, although not the recorded lessee of pergunnah Mohubutpore, &c. a Government khass mahal. He stated that the above 2 annas 15 gundas share of talook Nuruttum Moojumdar was pledged to him by the defendants, on the 1st Poos 1244 B. S. as security for rent payable to him by his under-farmers Rugonath and Ramdyal; that no mortgage had ever taken place; that plaintiff's husband was a poor brahmin who could not have advanced 100 rupees; that the real value of the property said to have been mortgaged, was not less than 4,000 or 5,000 rupees; and that the whole case was a conspiracy to defraud him of his just rights as holder of two decrees for rent against his under-farmers, Rugonath and Ramdyal, and their sureties, the defendants in the present suit.

The decision of the lower court is an extraordinary one. It states that, although from copy of a decision of the late court of appeal at Dacca, put in by claimant, it would appear that a claim of a nature similar to that advanced by him in this case, had led to the dismissal of a suit; and although, from claimant's witnesses having deposed that plaintiff's husband had been the defendant's family priest, and from the sum for which the property was mortgaged, appearing small, there might be a suspicion of fraud; yet, as the transaction had been fully proved, the mortgage regularly foreclosed, and the transfer of property declared absolute, the suit could not be dismissed. Judgment was then given for the plaintiff; but it concluded by declaring that, in the event of any other property possessed by the defendants not proving sufficient to cover the sum due to claimant under the two decrees for rent before mentioned, the whole of the property now adjudged to the plaintiff in this case would be liable.

As the plaintiff alone appeals, and as her objections to the decree are confined to that part of it, which declares her property liable for a debt due by the defendants to the claimant, the propriety of that part of the decree will alone be considered.

As the fact of the mortgage has been established, as having taken place in 1242 B. S., and as the claimant states that the 2 annas, 15 gundas share of talook Nuruttum Moojumdar was only tendered as security for his rents in 1244, he can have no claim even on that talook, either in law or equity. On what principle *the whole* of the property was held to be liable for the defendants' debt, it is difficult to understand.

The decree of the lower court must be modified; that part of it which declares the plaintiff's property to be liable for the debt due by defendants to the claimant, being reversed. Appeal costs payable by claimant.

THE 11TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 199 of 1846.

Regular Appeal from a decision of Moolvy Imdad Ali, Sudder Moon-siff, dated the 22nd July 1846.

• Imdad Hossein, (Defendant,) Appellant,

versus

• Mirza Baber Ali, (Plaintiff,) Respondent.

Suit laid at Company's Rupees 100.

THIS was an action for compensation in damages, for loss of character by abusive language uttered by the appellant and another. The latter was exonerated from liability, and therefore did not appear in appeal.

It would not appear that plaintiff had sustained any injury; but the moonsiff held that abuse was actionable, and awarded damages to the amount of 100 rupees.

As the words used by the defendant, however gross in themselves, do not evidently impart such defamation as must of course be injurious; and, further, as the abusive language which forms the ground of action in this case, was by plaintiff made the ground of a trial in the fouzdar court, and the defendant fined for the abuse, it was necessary that some specific injury should have been sustained, to render the words actionable in the civil court. No such specific injury having occurred, the moonsiff's decision is reversed. Costs payable by respondent.

THE 14TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 23 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 10th August 1846.

Moodoosoodun Gopt, (Plaintiff,) Appellant,

versus

Abdool Shickhdar and others, (Defendants,) Respondents.

Suit laid at Co.'s rupees 569-3-4.

THE plaintiff was nonsuited by the principal sudder ameen, on the 6th December 1845, and on the 26th May following the case was remanded for investigation on its merits, the reasons for the nonsuit having been held to be insufficient.

Plaintiff states that during his minority, in Assar 1240 B. S., he was dispossessed, by certain of the defendants, of 15 droons and 12 canuics of land in his ancestral zemeendarry, on the grounds of an alleged sale of the land to the said defendants, by plaintiff and his two brothers; that the zemeendarry was sold by auction in Sawun 1241 B. S., for arrears of Government revenue; and that the said defendants, on the ground of previous possession, had been admitted to enter into engagements for the rent, with the auction purchasers, as dependent talookdars: he brings this action to cancel or void the alleged sale, and to recover mesne profits for the period intervening between the date on which it is said to have taken place, and that of the transfer of the zemeendarry to the auction purchasers.

The plaintiff's two brothers were made defendants, but did not appear. The other defendants admitted the fact of occupancy, but pleaded their right to possession in virtue of the alleged sale.

On the 13th July 1846, after the suit had been remanded to the court of the principal sudder ameen, the plaintiff was desired to produce, within one week, documentary evidence to prove that the rental of the land in dispute was, as stated in the plaint, Co.'s rupees 336; and the defendants were called upon to prove their plea by the production of the bill of sale said to have been executed in their favor, and, by adducing evidence, to shew that at the time of the alleged sale the plaintiff had attained his majority: they were also desired to file certain proofs of present possession.

On the 20th July, plaintiff presented petition stating the almost insuperable difficulties which stood in the way of his obtaining documentary evidence as to the amount rental of the land, from the fact of his having been a minor when the alleged transaction took place, and praying either to be allowed a period of three weeks for the purpose of procuring such evidence, or to have an ameen

appointed to ascertain the rental by local enquiry. This petition was ordered to be taken up on the expiration of the period named in the proceeding of the 13th July, but the prayer of the petitioner was neither granted nor rejected.

On the 22d July, the defendants were fined for neglecting to furnish the required proof; but no notice was taken of the plaintiff's petition, except by an incidental allusion to it in the preamble of the roobocaree.

On the 31st July, the defendants were again fined for neglect; but neither the plaintiff nor his petition was mentioned in the proceeding.

On the 10th August, without any order having yet been passed on the petition, the suit was dismissed, because, it was said, the claim being for mesne profits, and the plaintiff not having adduced proof of the amount rental, it could not be investigated.

It was irregular in the lower court thus to dispose of the case without passing a definite order on the plaintiff's petition. As the defendants were twice fined for neglect, after the petition was presented, without any order being passed on it, it was natural for plaintiff to suppose that judgment would not be given against him so long as there was default on the part of the defendants. This, alone, would form a sufficient reason for a second remand; but there are other grounds for the adoption of that course.

If, as plaintiff states, he was a minor when the alleged sale took place, it is not to be expected that he should have it in his power to produce the documentary evidence required of him; and as the defendants allowed that they were in possession, but pleaded that the rental was only Company's rupees 91, there could have been no objection to the ascertaining the amount rental by local enquiry. But, further, the question of profits was a secondary one altogether; and the necessity for ascertaining the amount at all, depended on the result of the investigation into the validity of the alleged transfer in 1240. It was difficult for the plaintiff to prove a negative, viz, that such transfer never took place; and as the defendants pleaded the right of possession in virtue of that transfer, the *onus probandi*, on that point, lay with them; and such, it would seem, was the opinion of the principal sudder ameen, up to the day on which the case was decided. The plaintiff ought to have been called on to prove that, at the time of the alleged transfer in 1240, he had not attained his majority; and had he done so to the satisfaction of the court, such evidence, taken in conjunction with the default of the defendants, would have formed presumptive proof that plaintiff's claim was a rightful one.

The decision of the lower court must be annulled, and the suit again remanded. A reasonable period must be allowed the plaintiff to prove that he was a minor in Assar 1240, and to adduce any other evidence he may possess, in support of his claim; and after

the question of the amount rental of the land shall have been determined, (should the determination of that point be necessary;) by local enquiry or otherwise, the suit will be decided on its merits.

The value of the stamp on which the petition of appeal is engrossed, will be refunded.

THE 16TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 220 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Idris, Moon-siff of Begungunge, dated 3rd August 1846.

Jora Gazee, (Plaintiff,) Appellant,

versus

Musst. Joona Banoo, Koresh Mahomed, and others, (Defendants,) Respondents.

Suit laid at Company's rupees 64.

THIS was an action for possession of a 1 anna, 6 gundahs, 1 cowree, 2 krants share of a ryotœ holding, in an independent talook in pergunnah Bullooh.

The plaintiff sued as heir of his wife Sukeena Banoo, who died in 1229 B. S., stating that he continued in possession, after her death, until the year 1242, when he was forcibly dispossessed by the defendants.

The principal defendants, Koresh and Joona Banoo, denied that plaintiff had ever been in possession, and pleaded further that his wife having died during the lifetime of her parents, her husband was not the heir.

The moonsiff, after a very careful investigation, dismissed the suit as being barred by lapse of time, plaintiff having failed to prove, by documentary evidence, that he had been in possession within a period of 12 years, and the oral evidence adduced not being such as to satisfy the court.

Among the defendants were the superior talookdars, and they stated in their answer that, although the defendant, Koresh, was by them allowed to enter into engagements for the rent in 1242 B. S., they afterwards discovered that plaintiff had an interest in the land, but that they had no power to move in the matter. They adduced no evidence in support of their plea.

Nothing new being advanced in appeal, and the moonsiff's decision being just and proper, the appeal is dismissed with costs.

THE 18TH DECEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 22 of 1846.

*Regular Appeal from a decision of Moolvy Mahomed Ali, Principal
Sudder Ameen, dated 4th August 1846.*

Neelchand Shah, Musst. Parbutty, widow of Juggernath Shah,
and Musst. Sobedrah, widow of Shamnarain Shah,
(Defendants,) Appellants,

versus

Musst. Malencha, (Plaintiff,) Respondent.

Suit laid at Company's rupees 309-1-10-6.

THIS was a suit for possession, under the Hindoo law of inheritance, of a 4 annas' share of a petty independent talook in pergunnah Daodpore.

Plaintiff stated that an 8 annas' share of the talook was purchased by her in 1236 B. S., in the name and on the behalf of her two sons Jaronath and Hureekishen, then minors; that in 1240 B. S., her sons, yet in their minority, were disseised of the property thus acquired, by the defendant Neelchand and his brothers Juggernath and Shamnarain; that Jaronath, after attaining his majority, left his home for some years, and died soon after his return in 1250 B. S., when about to bring an action for the recovery of his share of the talook: she sued as heir of her son Jaronath, for a moiety of the property; and included her younger son Hurreekishen among the defendants, as being under the influence of Neelchand.

Neelchand, not having appeared until an advanced stage of the proceedings, was not permitted to plead.

Mussumaut Parbutty and Mussumaut Sobedrah pleaded that the property was originally purchased, not by the plaintiff, for her minor sons, but by Jaronath, after attaining his majority, for himself and his brother, the latter being then a minor; that it was sold by Jaronath, in 1240, to Neelchand and his brothers Juggernath and Shamnarain, their (defendants') husbands, plaintiff being privy to the transfer; and finally, that plaintiff could not be recognised as heir of her son Jaronath, during the lifetime of his brother.

Hurreekishen pleaded that the property had been acquired by his brother and himself in 1236, in the manner described by Mussumaut Parbutty and Mussumaut Sobedrah, and that he and his brother were forcibly dispossessed by Neelchand in 1240; but, that in 1250, after his brother's death, he (defendant) entered into a compromise with the disseisor, and relinquished his claim to the property, in consideration of a sum of rupees 171.

The bill of sale of 1240 was filed by the defendants, and, with the exception of the *ladâvee* (or deed of relinquishment) granted by Hurreekishen in 1250, to Neelchand and his brothers, was the only documentary evidence of importance, produced ; it bore the names of nine subscribing witnesses. Of these, four appeared for the plaintiff, and three for the defendants. The latter deposed in support of the plea of Mussumaut Parbutty and Mussumaut Sobedrah, declaring that the property was regularly transferred to their deceased husbands and Neelchand, in 1240, under the bill of sale produced, Jaronath having at the time attained his majority, but Hurreekishen being still a minor : three other witnesses to the transaction deposed to the same effect. The four witnesses who appeared for plaintiff, also bore testimony to the fact of the transfer in 1240 ; but they at the same time contrived to introduce into their account of it, so many particulars calculated to affect its validity, that it was not difficult to see that they had been brought for the sole purpose of casting doubts upon the legality of that which was in fact a valid and legal transfer. One of them (Obhey Churn) stated that his name had been affixed to the deed some months after the date of the transaction ; another (Rajanath) that although Jaronath's age in 1236 was 10 or 11, he could not say what it was in 1240 : three of them deposed that Jaronath was a minor when the sale took place, the other (Mohun) stated that in 1236, he (Jaronath) was 10 or 11 years of age, and in 1240, only four years afterwards, that he was 23 or 24!

The principal sudder ameen stated in his decision that, although no documentary proof had been adduced by the plaintiff to establish her case, it was impossible to declare a bill of sale to be valid, connected with the execution of which such conflicting evidence existed ; and, on the ground that certain circumstances stated by the witnesses on both sides, formed presumptive evidence of the whole transaction being a fraudulent one, on the part of Sumpotnath an uncle of the vendors Jaronath and Hurreekishen, he passed a decree for the plaintiff. I have said that the testimony of the plaintiff's witnesses, taken by itself, bears the strongest internal evidence of being false ; and I am confirmed in this opinion by the fact of one of the witnesses (Mohun) having lately appeared as witness in two other suits in which the plaintiff's interests were concerned, and in one case as a defendant confessing judgment, in a suit brought against him by plaintiff ; while another (Rajanath) is proved to have deposed, in a case in the criminal court, that Hurreekishen was his nephew, although in the present suit he states that he is unconnected with the parties. Two of the documents from which these particulars are ascertained, were filed by the plaintiff, with the view of supporting her claim ; and the principal sudder ameen himself stated that they were open to suspicion.

Such being my opinion with regard to the evidence adduced by the plaintiff, I cannot affirm the judgment of the lower court, a judgment which voids the title of the vendees, after possession by them and their heirs, for almost 12 years prior to the institution of the suit, and about two years after the death of the vendor. The facility of procuring false evidence in this country is so great, that the title of parties in possession should not be disturbed except on the clearest evidence. Were any other course to be adopted, and the interests of such parties not to be jealously protected, there are few transactions of the kind which might not be voided, owing to the ease with which the subscribing witnesses to a deed might be made to prevaricate.

According to the Hindoo law, the sale of his own share of the property, by Jaronath, after having attained his majority, would not be rendered invalid by the fact of his brother being at the time a minor.

The decision of the principal sudder ameen is therefore reversed, and the plaintiff's suit dismissed—all costs payable by respondents.

ZILLAH TIRHOOT.

THE 18TH DECEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 250.

Regular Appeal from the decision of the 2d Principal Sudder Ameen, dated 7th April 1845.

Bebee Syudtoon Nissa, Bebee Afzaloon Nissa, Mother and Step-mother, and guardian of Fusseeghun Nissa, Musst. Bebee Shahbone, Musst. Bebee Beekun and others, Appellants, (Defendants,)

versus

Amka Buksh, Luchmee Purshad, sons of Jhotee Sahoo, deceased, Proprietors of Mouzah Tagepoor Bugwan, Pergunnah Hajeepoor, Respondents, (Plaintiffs.)

THIS claim was instituted in the lower court to obtain possession of 13 beegahs, 17 cottahs, 19 dhoors of land in the village of Tagepoor Bugwan, pergunnah Hajeepoor, valued at Company's rupees 1263-6-9, and the mesne profits of the same from 1246 Fuslee to 1250, amounting to Company's rupees 333.

The plaintiffs set forth that in 1245, Meah Jan, the ancestor of the defendants, proprietor of the neighbouring village of Rambudur, began to dispossess them of the said land by forcibly reaping the crops. That they complained in the criminal court but were referred to a civil suit, they therefore bring their action. That in 1234 Fuslee, the village of Rambudur was measured by the canoongoe on the part of Government, to ascertain the amount of increment from the river Ganges, ("Gunga Berar,") and a map made of the same, but in which the land now claimed by them is not included; that they also hold decrees of civil court, for arrears of rent of the said land.

The defendants set forth, that the land in question belongs to their village of Rambudur, and has nothing to do with the village of Tagepoor Bugwan, belonging to the plaintiffs; and that when the village of Tagepoor Bugwan was attached by Government, the land in question was not included in the settlement made by the revenue officer.

The 2d principal sudder ameen, finding the proofs produced in his court by both parties inconclusive, himself proceeded to the spot and made a local investigation, taking evidence and comparing the maps produced with the locality, and, finding the weight of evidence and proofs to preponderate on the side of the plaintiffs, he decreed the land sued for in their favour, with mesne profits, bearing interest from date of suit, with costs.

The question to be decided in this suit is whether the land sued for belongs to Tagepoor Bugwan, the village of the plaintiffs, or that of Rambudur, that of the defendants. After a careful perusal of

the proceedings and the evidence in this case, I agree with the decision of the lower court, and therefore order that the appeal be dismissed with costs.

THE 19TH DECEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 330.

Regular Appeal from the decision of the Principal Sudder Ameen, Moulvee Neamut Ali Khan, dated 26th April 1845.

Munboodh Sahy, Appellant, (Defendant,)

versus

Chowdry Gunga Purshad *alias* Sooba Loll, Respondent, (Plaintiff.)

THIS suit was instituted in the lower court by the respondent, to recover the sum of Company's rupees 1528-9-7, for money lent on a bond bearing interest at the rate of 12 per cent per annum.

The plaint sets forth that the appellants borrowed from the respondents, on the 17th Bhadoon 1243 F. S., 12th September 1836, the sum of Sicca rupees 750, for which he granted his bond bearing interest and payable on the 30th Cheyt 1244 F. S., and that, as the appellant had never since paid a single farthing, he, the respondent, therefore brings his action.

In defence the appellant admitted the granting of the bond, but denied ever having received the money, as alleged, and stated that he had only got a note of hand for the amount payable by a certain banker by name Goonanund.

The lower court decreed the claim in full, observing that the borrowing of the money and the granting of the bond (the latter admitted by the defendant) was fully proven by the plaintiff's witnesses, and that, as for the teep or note of hand, if it was correct, the defendant might sue the banker for the same: the plaintiff having nothing to do with it, it could not be allowed as a set off. In appeal the defendant merely repeated his former defence, and seeing nothing to find fault with the decision of the lower court, it is hereby confirmed, and ordered that the appeal be dismissed with costs.

THE 19TH DECEMBER 1845.

PRESENT: J. F. CATHCART, JUDGE.

No. 329.

Regular Appeal from the decision of the Principal Sudder Ameen, Moulvee Neamut Ali Khan, dated 25th April 1845.

Luchmee Nurayn, Appellant, (Plaintiff,)

versus

Rambuksh D6bhy, Kunhyah Dobhy, and others, Respondents,
(Defendants.)

THIS suit was instituted by the appellants in the lower court to recover the sum of Company's rupees 2999-2, balance of a loan

lent to the respondents on a bond bearing interest at the rate of 12 per cent. per annum.

The appellants set forth that on the 20th Aghun 1247 F. S., 11th December 1839, the respondents borrowed from them the sum of Company's rupees 2600, and granted a bond for the same, bearing interest at 12 per cent. per annum, payable on the 30th Jeith 1247, and that notwithstanding the expiration of the term of the bond only Company's rupees 775 have been repaid; and as the respondents refuse to pay, they therefore sue them for the balance of the account which stands thus—

Original loan Company's rupees	2600		
Repaid.....	775		
		1,825	
Interest	1,174	0	2
Claim	2999	0	2

That although the place of residence of the respondents is in the Terai of Nepal, the loan was made in the village of Sookhpur, Pergunnah Bussotrah, within the jurisdiction of Tirhoot, they therefore bring their action in the zillah court. For the defence it was urged that the claim was false and got up through spite, and that there previously existed a quarrel between the parties regarding a certain estate in litigation, also that the real instigators of the suit did not appear.

The principal sudder ameen, considering that the claim was false and not proven, dismissed the same. In this court it appearing that the lower court, before taking the defence of the respondents, they being foreigners, had not called upon them to furnish the security required by the provisions of Regulation XIV. of 1829, it is accordingly ordered that the proceedings of the lower court be quashed, and that the case be sent back to be tried according to the regulations, the matter of costs to be determined hereafter.

ZILLAH TIRHOOT.

THE 11TH DECEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 743.

Regular Appeal from a decision passed by Syud Ashruf Hossein Khan, 2nd Principal Sudder Ameen at Mozufferpore, Tirhoot, dated 13th August 1844.

Musst. Joysunder Koonwur, widow, Baboo Gooder Singh and Tillockdarry Singh, brothers of Baboo Rasnarain Singh, deceased, Appellants, (Plaintiffs,)

versus

Shaik Molahbucksh, son of Shaik Khoodabucksh, deceased, Chaitnarain Sing and 17 others, Respondents, (Defendants.)

THE suit is for possession, partition of the land, and revenue thereof, and mutation in their names of 2 annas share within 4 annas portion of the whole 16 annas of talookah Bishenpore Ackah, the principal with the dependencies thereunto belonging, purgunnah Surreesa, with mesne profit thereon from 1248 to the six annas kist, or instalment, of 1251 Fuslee. Action laid at Company's rupees 4847-2-10. The appellants claim as heirs, viz. one of them as the widow and the other two as brothers to Baboo Rasnarain Singh, who, it is said, conjointly with Shaik Khoodabucksh and Odah Singh and others purchased the talookah at auction, put up for sale on account of arrears of revenue; it was knocked down to and recorded in the name of Shaik Koodabucksh only, as the purchaser at Sicca rupees 30,600. On the sale being confirmed by the revenue authorities, Shaik Khoodabucksh solicited the collector, by petition, to record the names of Odah Singh and Rasnarain Singh, in the mutation book as joint sharers of 4 annas, and himself as 12 annas' sharer in the auction purchase of the talookah; conformable thereto the mutation was effected on the 11th of March 1815. Afterwards Brejbeeharee Lall and others sued for 4 annas portion, as having been joint purchaser at the auction sale of that portion, and obtained a decree for that portion, from Khoodabucksh's share; from which period the

several purchasers and their heirs held possession to the end of 1247 Fuslee. In 1838 English era, the right and title of Odah Singh, the husband of Musst. Soorja Koonwur, in the talookah was sold at auction in satisfaction of a decree of court, in favor of Musst. Mohun, the wife of Sukim Lall, the guardian of Kulerlall, a minor, and was purchased by Shaik Molabucksh, the son of Shaik Khoodabucksh, for the sum of rupees 4400. The appellants, on the demise of their ancestor Rasnarain Singh, presented a petition to the collector for the mutation of their names, as heirs to the demised, when Shaik Molabucksh presented a petition in opposition thereto, declaring himself the purchaser at auction of the 4 annas share appertaining to the late Odah Singh in the talookah. This contest was carried to the revenue commissioner, and to the Board of Revenue, and back to the revenue commissioner, who finally, on the 9th of February 1842, referred the parties to adjust their dispute in the civil court, hence this suit. The appellants, in further proof of their claim, allege, in the case in which Beebee Zenutulnessa Begum sued for the cancelment of the auction sale of the talookah, Shaik Koodabucksh in reply to that plaint, stated that Rasnarain Singh was a sharer in the 4 annas portion, had not been made a defendant, and Rasnarain Singh conjointly with Odah Singh farmed the 4 annas share to the Dholee indigo factory, and the rent was regularly received therefrom, that Shaik Molabucksh was the purchaser of the rights and interests of Odah Singh only, in the talookah. The defendant Molabucksh alleges the talookah was put up to public sale in 1814, and purchased by Shaik Koodabucksh, his father, for the sum of Sicca rupees 30,600. Bahoo Odah Singh was admitted as a sharer of 4 annas, who at that time craftily added the name of Rasnarain Singh. Odah Singh held possession during his lifetime, after his death, Adeeahduth Singh, after his death, Dishtduwun Singh, and then, Musst. Soorjah Koonwur, the widow of Odah Singh, by a decision of the court, and affirmed by the Sudder. This portion having been put up to auction in satisfaction of decree of court, was purchased by his father, Shaik Koodabucksh, and agreeably to the order of the court the 4 annas share was put into his possession. The ancestors of the plaintiffs never urged any opposition. The proof that Odah Singh held the right of the whole 4 annas portion is established by the decision of the court and the Sudder, which are ready for delivery. The defendants, Bunseedar Rae, Omra Rae, and Jankee Rae, allege, they purchased their shares under bills of sale, and have no concern in the portion under dispute.

The second principal sudder ameen dismissed the case on the grounds: the plaintiffs had not filed any document of partnership in the 4 annas share under the signature of Odah Singh. The petition of Shaik Koodabucksh, filed in the collectorate for the mutation

of Rasnarain Singh's name, the circumstance that Rasnarain Singh was a sharer mentioned in Shaik Koodabucksh's reply to a plaint of Brejbeeharee and others, and other papers filed by the plaintiffs, do not prove that Rasnarain Singh was in possession in the same manner as Odah Singh. Although the witnesses deposed the name of Rasnarain Singh was inserted in the kaboolets, or 'counterpart of the lease, yet he had no concern therein. The papers of the receipt of rents were not filed when called for by proceeding, and their production after a very lengthened period causes a suspicion of their correctness; and the evidence of the plaintiffs' witnesses is not to be depended upon.

Against this decision the plaintiffs appealed, urging, the respondents purchased at the auction sale the rights and interests of Odah Singh only, and not their share. Sundry documents and witnesses were adduced in proof of their possession. The second principal sudder ameen sets forth to be mamolee, which is not known what is signified by that term. At the time of the auction purchase of the talookah their ancestor's name was entered in the mutation book. It was not necessary to obtain a deed of partnership from Odah Singh. Odah Singh was a wealthy person, and having no concern with him, why should he cause their ancestor's name to be entered in the mutation? After their ancestor's death the pottahs and koboolets, or deeds and counterparts of them, were drawn out in the name of Gooder Singh, heir, proves possession, &c.

Answer of respondent. Rasnarain Singh was nephew to Odah Singh, hence the combination in the mutation of his name in the collectorate, and the cause of institution of this suit; from the investigation made, it is proved he had no concern in the talookah. Rasnarain lived eleven years without possession, and died in 1232 Fuslee. The appellants have been, too, twelve years without possession in the concern of the talooqah. First, the whole 4 annas was in the possession of Odah Singh, after his death Adeaduth Singh, after his death Dushtduwun Singh; and on Musst. Soorja Koonwur, the widow of Odah Singh, suing, obtained a decree for possession, which was confirmed by the Sudder, and afterwards sold in satisfaction of decree of court, and purchased by him, put in possession, and all the documents regarding thereto have been filed, &c. The other respondents' answer is a recapitulation of their reply to the plaint.

COURT.

It is true Shaik Koodabucksh subsequently to the auction purchase of the talooqah, solicited the collector, by petition, for the mutation of the names of Odah Singh and Rasnarain Singh, as conjoint purchasers with himself of the talooqah: they as 4 annas

sharers, and himself 12 annas sharer; and according thereto the mutation was effected. In the suit of Beebee Zeenutulnessa Begum for cancelment of sale of the talooqah, Shaik Koodabucksh in his reply to that plaint stated that Rasnarain Singh, a sharer in the 4 annas portion, had not been made defendant in the case. One of the defendants Shaik Molabucksh in the present case, does not deny those circumstances, but it does not appear that Rasnarain Singh ever held possession or had any interference in the talookah, until it is asserted the 4 annas share was leased by Odah Singh and Rasnarain Singh in the year 1821 to Dunput Matoon and others, it does not specify the share held therein by Rasnarain Singh, and is signed by the pen of Odah Singh. No attempt was made to prove this document. The lease granted, under the name of Musst. Soorja Koonwur, the widow of Odah Singh, and Gooder Singh, the brother and heir of Rasnarain Singh, to the factory at Doolee from 1239 to 1243 Fuslee, and the koboolet or counterpart of a lease from Mr. Slone, shewing a lease had been granted to the factory at Doolee from 1244 to 1248 Fuslee, by Dushtduwun Singh (heir to Odah Singh) and Gooder Singh. These documents do not specify the share leased, but merely the share of the granters in the talookah. To make a lease valid, it is necessary the portion or share appertaining to the lessors should be mentioned therein, and who must have known what share they held; and the lease is signed under the names of the lessors by the pen of Baboo Purboodeepnarain Singh; it does not appear he was authorized to write their names, by power of attorney or even orally. In proof of the koboolet, or counterpart of the lease, witnesses were adduced, and their evidence proved one of the lessors, Gooder Singh, was not present at the time the lease was entered into, and there is no power of attorney to establish that Dushtduwun Singh was duly delegated to sign his name to the lease, consequently, these documents are invalid, thereby cannot be admitted in court as evidence of possession. From the omission in those documents what portion of the estate was leased, there is every reason to suspect that the real sharers in the estate had no concern in drawing out the leases, for they must have known what portion appertained to them. The papers of accounts of receipts of rent are not to be depended on, they were not filed for more than a month after they were called for by proceedings of the court. The papers appear new, and the writing thereon not of 14 and 15 years' standing, but recently effected. From the evidence of witnesses it appears Rasnarain Singh died in 1232, and the plaintiffs did not attempt to apply for mutation of their names for 14 years, in fact not until the auction sale had taken place. Under the above circumstances the appeal is dismissed with costs, and the decision of the 2d principal sudder ameen is affirmed.

THE 12TH DECEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 517.

Regular Appeal against a decision passed by Syud Ashruf Hossein Khan, 2nd Principal Sudder Ameen of Mozufferpore, dated 13th May 1844.

Purboo Rae and seven others, Appellants, (Defendants,)

versus

Sheeb Sahoo, Munhorut Sahoo, and four others, Respondents,
(Plaintiffs.)

THIS suit is for the possession of 36 beegahs, 12 biswas and 12 dhooors of land belonging to the village Nyahgong, pergunnah Treesut, for the reversal of the proceedings of the deputy collector dated 5th December 1840, and also of the proceedings of the magistrate dated 19th June 1841. Action laid at Company's rupees 1135-14.

The plaintiffs allege, the land in question was by the defendants wrongfully pointed out, as appertaining to their villages Burtooah and Tarbhurteil, when those villages were attached under the 2nd Regulation of 1819, thereby causing the land to be annexed to their villages, attached, measured, and assessed; although objections were urged against it before the settlement officer, he paid no attention thereto. The defendants beat the ryots and caused a complaint to be lodged before the magistrate, who passed an order for the defendants to be retained in possession. The kuboolets, or counterpart of the ryots' deeds, prove their right to the land.

The defendants, Purbhoo Rae and seven others, plead, the whole of the plaintiffs' allegations were made to the deputy collector and the settlement officer, and after enquiry the settlement was made with them, the defendants. The counterpart of the deeds, &c., filed by the plaintiffs were from persons under their influence, therefore not to be depended upon. There was a dispute regarding the lands in 1166 Fuslee, which was adjusted by arbitration: that decision is ready for delivery.

In answer to reply of plaint, the plaintiffs allege they know of no previous dispute regarding the land, or award of arbitration; but the land now under dispute, when formerly measured by Seereekishen Rae, proved to belong to them, and exempted from the then settlement.

The 2nd principal sudder ameen passed a decision in favor of the plaintiffs on the following grounds.

Although the plaintiffs describe a nasee or drain to form the boundary between the villages, it is not marked in the map sketched by Mr. Fleming; the mooktar, or agent, on the part of the plaintiffs was unable to point it out, or is it discoverable. But

from personal enquiry and from proofs adduced, counterparts of deeds from ryots, evidence of witnesses taken in court and by the ameen on the spot, and the ameen's report, it appears, the plaintiffs were formerly in possession of the land. The annexment of the land to the village Burtooah, and making the settlement thereof with the proprietors of that village, was improper. The land under dispute to be put in the possession of the plaintiffs.

The defendants appealed against this decision, urging: notwithstanding the plaintiffs were unable to point the boundary between the villages mentioned in their plaint, the 2nd principal sudder ameen, on invalid kuboolets or counterparts of deeds from ryots, and evidence of witnesses which are contradictory, passed a decision in favour of plaintiffs. The kuboolets or counterparts of deeds, signed by Towakul Sahee and others, sharers in the village of the plaintiffs, were not taken into consideration by the 2nd principal sudder ameen; owing to those engagements, those sharers did not join in that suit with the plaintiffs against them.

The respondents in their reply plead: the limit of the defendants' land is on the east extremity of the embankment denominated "bund Hurbunse," which is marked in the map sketched by Mr. Fleming, to the east and south thereof is their, the respondents' land, has been proved from the enquiry made by the ameen and evidence of witnesses; hence the decree in their favor. The nasee or 'drain' having decreased is not now discernable. There never was a previous dispute, to have been adjusted. The land in question has never been decreed to any person. Towakul and others, former proprietors of Nyahgong, having disposed of their shares, are not now proprietors; their kuboolets or counterparts of deeds filed by the appellants are not of any utility.

COURT.

It appears the land described in the map sketched by Mr. Fleming, was decreed to the appellants by the Sudder Dewanny Adawlut, under date 19th July 1837; the sheriff of the court was deputed to put them in possession, who, to identify the land, took depositions of sundry witnesses previously to putting the decree-holders in possession. The evidence given at that time, and that in the present suit by witnesses adduced by the respondents (plaintiffs) are in direct opposition: but two of the present witnesses also gave their evidence before the sheriff, when he was making over possession of the land, their former and present evidence disagree, hence yielding an inference they have been tampered with by the respondents, to give evidence in their behalf: this circumstance throws a doubt on the validity of the evidence of the other witnesses, adduced by the respondents. The respondents' (plaintiffs') allegation that on a former occasion when the said land was measured proving to belong to them, was relinquished to them,

and not assessed, this not having been represented to the deputy collector or the settlement officer, cannot be enquired into by the court. Both the deputy collector and the settlement officer decided principally against the respondents' claim to the land on the ground it being within the dotted marks in the map sketched by Mr. Fleming: which, proceeding from the embankment denominated "bund Hurbunse" at the north, gradually increasing in width on both the west and east sides in its progress to the south extremity, where both sides project out, the sketch of the land nearly resembling a triangle. The map sketched by the 2nd principal sudder ameen does not correspond with that of Mr. Fleming on the east side thereof, in lieu of a gradual increase as it proceeds from the north to the southward, it is a strait line to about somewhat more than two-thirds of the way and then strikes towards the westward, taking a large quantity of land therefrom between the land of the appellants, defendants, and comes out to meet the strait line again. Although the land may be considered as appertaining to the appellants' defendants' village Burtooah, yet, under the peculiar circumstance, it having been assessed by the settlement officer, the respondents should have appealed to the revenue commissioner and the special commissioner's court, which court alone could have determined that point. Under the 1st Regulation of 1793 and 7th Regulation 1799, the civil courts have not the power to interfere in the matter of assessment, which point is intermingled in this suit, therefore the decree is in favour of the appellants, costs of both courts to be paid by respondents, and the decision passed by the 2nd principal sudder ameen reversed.

THE 15TH DECEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 586.

Regular Appeal from a decision passed by Shaik Durasut Ali, Moonsiff of Durbungah, dated 9th August 1845.

Shaik Roshun, Appellant, (Defendant,)

versus

Bunsmun Chowdree and 2 others, Respondents, (Plaintiffs.)

IN this case the respondents sued the defendant, as their gomash-ta, or collector of rents, for the recovery of Company's rupees 15-10-3, being the principal and interest due by defendant on balance of rent collections, made in the years 1248 and 1249 Fuslee, from the 4 annas share, the portion appertaining to the plaintiffs in the village Bishenpore, purgunnah Shajanpore.

The defendant in his reply denies having been gomash-ta, or collector of the rents; if he had been, there would have been an inter-

change of written deeds between them for that purport; and the plaintiffs would have obtained his signature on the balance account. The plaintiffs themselves received the rents and signed the receipts. He himself was a-jaite, or one of the head ryots.

The moonsiff decreed in favor of plaintiffs on the grounds: the papers filed and evidence of witnesses adduced by the plaintiffs proved their claim. The defendant's acknowledgment of being gomashtha or collector of rents, his allegation of not being entrusted with the receipts of the rent, is not admissible. The defendant's witnesses being of his own caste, their evidence is not to be depended upon.

Against this decision the defendant appealed, urging: the plaintiffs adduced no written document, he had been their gomashtha, and merely an account written by the putwarree on unstamped paper, so much was due; if he had been gomashtha or collector of rents, a written engagement and security, as is customary from gomashthas, would have been taken from him. The moonsiff's statement that he, the defendant, acknowledged being gomashtha or collector of rents, is not to be found in any of the papers filed by him, the defendant.

The reply of the respondents alleges: the paper of account balance filed by the putwarree is correct, and their witnesses proved the defendant was gomashtha, or collector of rents, and a balance of the receipts of rent was due.

COURT.

In the plaint no mention is made that the appellant had written an account exhibiting a balance and signed it. The witnesses who had given their evidence in the moonsiff's court, not having been sufficiently interrogated to draw out the truth, subpoenas were issued for them; two only attended—the putwarree, and a witness who had no knowledge of the circumstance of the accounts. The accounts of daily receipts of rents, and disbursement thereof, were not kept, that is, written by the appellant, who cannot read or write (proprietors of land retaining such a description of gomashtha deserve to sustain losses): the accounts were written out by the putwarree, the sums paid to the respondents, and into the Government treasury, from the receipts of rent, are evidently, from the wording, remittances made by the putwarree himself to the collectorate, and to the respondents, through the agency of the appellant: this, together with the circumstance of not adjusting accounts with an unlearned man for two years, tend to show the putwarree was more responsible for the receipts of the rent than the appellant. And there is every reason to believe, the account balance, said to have been signed under the sanction of the appellant as correct, had not been written at the time the suit was instituted, otherwise it would have been mentioned in the plaint. This court

required the jumma wasil bakee, or demand, receipt, and balance, of the village, in lieu of which the putwarree produced those accounts for the four annas portion only, and acknowledged by the putwarree to have been formed and written out subsequently to the order of this court to produce the original village accounts. Under the above circumstances the appellant cannot be considered responsible for the deficiency, if there be any, in the rents received in the year 1248 and 1249 Fuslee, on account of the portion of the village appertaining to the respondents: therefore the decree is in favour of appellant, the moonsiff's decision is reversed, and the costs of both courts to be paid by the respondents.

THE 16TH DECEMBER 1846,

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 991.

Regular Appeal from a decision passed by Syed Ashruf Hosein, Second Principal Sudder Ameen, Mozufferpore, dated 2nd September 1844.

Booneead Sing, Appellant, (Plaintiff,)

versus

Musst. Durrum Koowar, vender, and Sham Singh and Munhore Singh, purchasers, Respondents, (Defendants.)

THIS suit was instituted for the cancelment of a bill of sale, dated 13th January 1842, and mutation of his name in the collectorate of 4 annas, 10 and $\frac{1}{2}$ pie's share in the village Hurpore Sydabad, pergunnah Balagutch. In the original case, the action was laid at Company's rupees 2,000, the amount mentioned in the bill of sale. In the appeal, action was laid at Company's rupees 241-5, being three times the amount of the annual revenue of the share sued for. The plaint sets forth the grandfather of the plaintiff acquired 9 annas, 9 pies share in the above-mentioned village; dying, left two sons, one Surrubjeet Singh, the husband of the vender, the other, Ajeet Sing, father of the plaintiff. The property was sold on conditional bill of sale. Both brothers having redeemed the property by payment of the amount of sale, obtained a mutation of their names as joint proprietors of the property in the collectorate, and continued to hold possession as such. In 1214 Fuslee, the husband of the vender died childless, and in 1230 Fuslee, the plaintiff's father died, leaving him, his son and heir. Owing to a debt of his father, his rights and interests in the property were in satisfaction of decree of court sold at auction; the mutation of the other share was effected in the name of the defendant, Musummat Durrum Koowur, as heir to her husband, but remained in possession of the plaintiff, who, it is alleged, maintained

her. In 1240 Fuslee, she became deranged in mind, and intimation thereof was made known to the court.

Owing to the derangement, she was expelled the caste. The other defendants, the purchasers, caused the female to sign the bill of sale, and effected the mutation of their names in the collectorate. Being ancestral property, conformably to the shaster she had no power to dispose of the property, therefore sue. The defendant, Musst. Durrum Koowar, denies the property was ancestral. One Sooboor Sing sold the property on conditional bill of sale. The plaintiff's father and her husband having divided their property, and paid off the loan on the conditional bill of sale, the plaintiff's share was sold at auction. Having continued in possession, in order to pay off her husband's debts, sold the property.

Reply of the defendants, the purchasers, is similar to the above reply.

The second principal sudder ameen dismissed the case, on the grounds: the plaintiff had not filed any proof that the property was ancestral; from the evidence of the witnesses on that point, it is not discernible. The defendant has filed a decision dated 28th of January 1841. The farmer of the property under dispute, on the part of the female defendant sued a ryot for rent, in which case the plaintiff made similar allegations as he has in this present case, but the decree was given in favor of the farmer, from which it is evident the female was in possession. In that other case, an ekrarnamah, or an agreement, was filed by the present plaintiff as a third party, denies in his answer to the reply of the defendants; the original case, having been sent for, it was found therein, which shews his denial of it to be false; and from the collector's proceeding it appears the vender's husband acquired the property. The evidence of witnesses prove the property to be in possession of the vender; and copy of a beiwestah filed in this case, shews the plaintiff has no claim to the property.

Against this decision the plaintiff appealed, urging: In proof that the property is ancestral, the bill of sale thereof, dated 1200 Fuslee was filed, and witnesses adduced. In the vender's reply to plaint, there is a partial acknowledgment of the property being ancestral. The moonsiff's decision in the rent case, does not affect the proprietary right to the property. The defendant filed no papers in the case to shew the property was not ancestral: the beiwestah of the pundit is not suitable to this case, as the property had not been divided. The derangement of the female was proved, but the principal sudder ameen took no notice thereof.

COURT.

From perusal of papers of this case, and the ekrarnamah said to have been filed by the present plaintiff in that case for rent, &c., there are points in the decision of the 2nd principal sudder ameen

not borne out by the papers in the case. It will be sufficient to remark, the proceeding of the collector has not any expression, from which the slightest allusion can be inferred, that the husband of the defendant Musst. Durrum Koowur acquired the property under dispute. And the copy of beiwestah filed is not applicable to this suit: it was therefore requisite to have called on the pundit for a beiwestah, explaining to him the exact position of the contending parties in this case; not having done so, the investigation is incomplete, therefore the decision is cancelled and the case returned for re-investigation. To call on the pundit for a beiwestah on the following queries: A person of the writer caste purchased an estate, and obtained a mutation thereof in the collectorate. He died, leaving two sons, who disposed of the property on conditional bill of sale, having redeemed the same by payment of the loan, obtained mutation of their names in the collectorate as the joint property of both. They were married. Surrubjeet died childless in 1214 Fuslee, leaving his wife. The other brother died in 1230 Fuslee, leaving a son. The wife in 1233 Fuslee, nineteen years after the demise of her husband, applied for and obtained mutation of her name as heir to her deceased husband; shortly after the rights and interests of her husband's nephew in the village were disposed of by auction in satisfaction of decree of court. Is the property, the half portion of the village, *bona-fide* the property of Surrubjeet's wife? Has she a right to dispose of it by bill of sale during the existence of her husband's nephew? or has she a life interest only in the property? The 2nd principal sudder ameen is requested to refer to the reports of cases decided by the Sudder Dewanny Adawlut, 7th volume, 1st part, pages 22, 23, and 24, case of Musst. Lalchee Koonwur, appellant, *versus* Shewpershad Sing and others, respondents. To allow both parties to file any further proofs they may have to establish their respective allegations, and to decide the case according to the merits of the case. The amount of stamp of the appeal plaint to be returned to appellant.

THE 18TH DECEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 744.

Regular Appeal from a decision passed by Molovi Niamut Ali Khan, Principal Sudder Ameen of Mozufferpore, dated 12th August 1844.

Musst. Soorja Koonwur, Appellant, (Plaintiff.)

versus

Achumbit Lall Mhata, Respondent, (Defendant.)

THIS suit was for possession and mutation of 2 annas, 13 gun-dahs, 1 cowree, and 1 kurrant, within the 3d share of the whole

16 annas of talookah Hurpore Poosah, purgunnah Surrisa, ushlee mai duklee, or principal and dependencies, and for reversal of the magistrate's proceedings, dated 6th January 1843, and of the session court, dated 19th July 1843. Action laid, including mesne profits, Company's rupees 1556-11-9.

The plaintiff states a third of the above mentioned talookah was purchased by her husband Odah Singh conjointly with Adeeahduth Singh, the father of Dushtduwun Singh, under bill of sale dated 1229 Fuslee, in which the name of Adeeahduth Singh only was inserted, but in the talookah both held possession, half and half of the purchase. The deeds or grants of land, and their counterparts, and suits carried on in court, were all in both their names. On the death of her husband Odah Singh, Adeeahduth Singh declared the whole of her husband's property was willed to him. Whereon she instituted a suit against Adeeahduth Singh, obtained a decree in her favour, which was confirmed by the Sudder Dewanny Adawlut. In the interim the rights and interests of Adeeahduth Singh in this talookah were sold, in satisfaction of decree of court in favor of Mudun Mohun Sahee, was purchased at the auction by the defendant; at which period her share had been leased to Mr. Skone, of Doolee factory, in charge of Mr. Charles Mackinnon. On expiration of the lease, the defendant opposed possession; after a time, the defendant ultimately obtained under the IV. Regulation of 1840 an order for possession, which was confirmed by the session court. The defendant alleged the plaintiff's husband was never a sharer or in possession of the property, it having been purchased by Adeeahduth Singh without any sharer, and his name only was entered in the mutation book; and after his death the name of his son Dushtduwun Singh, at which period no objections were made thereto. At the auction sale in satisfaction of decree of court, he had purchased it for Company's rupees 9,950 on the 16th May 1838, corresponding with 7th Jait 1245 Fuslee, from which date he has continued in possession, and has been in the receipt of the rent of that portion of the land on which the Government stables are erected. In the suit for her husband's estates, the judge passed a decree in her favour with the exception of the 3d portion of this talookah; and on appeal the Sudder Dewanny Adawlut directed to set the auction purchaser for this portion of the talookah, when the necessary enquiry would be entered into, whether it was purchased in partnership with Adeeahduth Singh by her husband, or only by Adeeahduth Singh.

The principal sudder ameen dismissed the case on the following grounds. The suit of the plaintiff is as sharer in the property, and no deed of partnership has been filed. It appears the mutation in the collectorate was originally effected in the name of Adeeahduth Singh, and after his death in the name of his son Dushtduwun Singh; the name of the plaintiff or that of her husband is not entered in

mutation book. Previous to the mutations taking effect, proclamations were issued, that applications had been made for that purpose, no objection, or urging the circumstance of partnership, was made against the mutations being carried into effect. Copies of decisions for rent, and copy of counterpart of lease by Mr. Slone filed by the plaintiff, are of no benefit. Some are by bazeenamah or by withdrawal; and some struck off the file: in neither of them was the point of partnership enquired into. The decision of the Sudder Dewanny Adawlut clearly states, "on the plaintiff suing Achumbit Mhata, it will be necessary to enquire, whether the 3d portion of the talookah was purchased by the husband of the plaintiff or by Adeeahduth Singh." Having made that enquiry, the purchase by the husband of the plaintiff is not proved. The defendant has filed copy of security bond of Adeeahduth Singh's, in which the 3d of the talookah is pledged in surety, against which neither the plaintiff or her husband made any objection.

Against this decision the plaintiff appealed, urging documents had been filed in proof of her claim. The decisions for rent were in both their names, Adeeahduth Singh and Odah Singh, and during the lifetime of her husband no opposition was made, after his death opposition was made, and complaint made to the magistrate, when possession was given, and a *moothulka*, or a written deed to keep the peace, taken from Adeeahduth Singh. From 1240 to 1246 Fuslee, her share was leased to Mr. Slone, who is a third portion sharer in the talookah, and who obtained decrees against the ryots for rent on her share. The auction sale was, the rights and interests of Dushtawun Singh, and her share was not disposed of.

Reply of respondent. "No deed of partnership was adduced in the case, the documents filed in proof thereof are merely decisions on account of rent, and occurrences at the criminal and sessions courts, which do not prove partnership; and the principal sudder ameen made the necessary enquiry enjoined by the Sudder Dewanny Adawlut, without the appellant establishing the point, &c.

COURT.

Appellant, in proof of her claim, filed copies of two documents: one a decision dated 25th of August 1824, regarding an attachment on account of rent wrongly effected: for the claim of rent was not established. It appears from the decision the proprietors themselves made the attachment, being wealthy and respectable persons, that cannot be correct: if the attachment had been made by a *gumashtah* or other officers of the supposed proprietors, then there might be some truth in the matter. The other document, a decision of the moonsiff at Dulsingsurai, dated 18th March 1831, on account arrear of rent, in which suit a bazeenamah or withdrawal of suit was filed, after an elapse of near one year and three

months from the institution of the suit. The original case was called for from the record office, in order to ascertain by whom the power of attorney was signed, appointing an attorney to file and carry on the suit. The case was not to be found. These documents cannot be considered as proofs to the appellant's claim. The other documents filed are of subsequent date to the order passed by the magistrate, directing Dushtduwun Singh to enter into a moochulka, or a writing, he would not interfere in the appellant's share on a pain of a very heavy fine. The appellant appears to have instantly leased the share to Mr. Slone, of the Doolee factory. Dushtduwun also leased half of the 3d portion of the talookah to the factory, but in that deed declares himself the proprietor of the whole 3d portion; from which it is apparent he did not relinquish his right, but at the same time was unwilling to oppose the magistrate's order. If the appellant's husband had a share in the 3d portion of the talookah, his name would have been inserted in the deeds with the ryots, and other papers of the village; not one such document has been adduced in proof therefore. The attorney of respondent held some such documents in proof: the appellant's husband's name was not inserted in them—they were not allowed to be filed. Under the above circumstances there does not appear any cause to alter the decision of the principal sudder ameen, which is affirmed, and the appeal dismissed with costs of both courts to be paid by appellant.

THE 19TH DECEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 108.

*Regular Appeal from a decision passed by Molovi Niamut Ali Khan,
Principal Sudder Ameer, Mozufferpore, dated 4th January 1845.*

Cheetroo Rae, (the other six Defendants did not join in the appeal,)
Appellant, (Defendant,)

versus

Ruggoonauth Purshad, Respondent, (Plaintiff.)

THIS suit was for the possession, mutation of his name, and a division of the land and revenue, agreeably to the bill of sale dated 11th of Assin 1247 Fuslee, corresponding with 3d of October 1839, of 3 annas, 4 dams within the property and mookurree, or perpetuity, of the 16 annas of village Goornamah, purgunnah Badboosaree; 12 dams, 16 cowries of the whole village Kooreeah, purgunnah Balleeah; 3 annas, 4 dams within the 16 annas of village Mahajole Raj Kan, purgunnah Badboosaree, together with mesne profits

from 1247 to 1250 Fuslee. Action laid at Company's rupees 1444-10-6.

The plaint sets forth that Juggun Singh, the son of Jēwun Singh, and grandson of Balbudder Singh, sold to the plaintiff the above-mentioned portions of villages under bill of sale for rupees 999: on payment of that sum the bill was registered and possession given; but on application for mutation of his name, the collector declined to comply therewith, arising from the circumstance, the recorded name to the property sold, was Juggernauth Rae and not Juggun Singh. On his suing some ryots for rent, the vender put in a third party petition, denying the sale; the moonsiff passed a decision in his favour; but on appeal by the third party, the principal sudder ameen reversed the decision and directed to sue for the property, hence this suit.

The defendant, Cheetoo Rae, denies the validity of the claim; that the bill of sale was written by collusion of Durgahduth, the other defendant. If the bill of sale was genuine, the real name would have been written, and signed by him. Defendant, Jummun Rae and 4 others, they had been made defendants, as a cautionary measure, and knew nothing of the sale.

Reply of Durgahduth, defendant. The bill of sale was signed by him by the desire of the vender, and the purchaser put in possession; but is now in the possession of the heirs of the vender.

The principal sudder ameen passed a decision in favour of the plaintiff, on the grounds: it having been proved by the evidence of the subscribing witnesses to the bill of sale: it being likewise proved by the several documents filed by the plaintiff that Juggun Singh, the vender named in the bill of sale, was also called Juggurnauth Rae. The mesne profits will be given on enquiry in execution of the decree. All the defendants exempted from liability, with the exception of Cheetoo Rae, who is to pay the mesne profits and the costs.

Against this decision Cheetoo Rae, one of the defendants, appealed, urging: he had proved by evidence of witnesses that Juggurnauth Rae was not called Juggun Singh, &c. Respondent replied: At the time of writing the bill of sale, the vender was old; and it has been fully proved in the investigation before the principal sudder ameen that he bore both the names Juggun Singh and Juggurnauth Rae.

COURT.

Although the name of Juggernauth Rae is recorded in the collectorate, but it appears from the evidence of the putwarree and other witnesses, and likewise documents prove, the landed transactions were carried on under the name of Juggun Singh, hence there is no cause that the decision of the principal sudder ameen

should be altered : it is therefore affirmed, and the appeal dismissed with costs.

THE 19TH DECEMBER 1845.

PRESENT : JOHN FRENCH, ADDITIONAL JUDGE.

No. 164.

Regular Appeal from a decision passed by Shaik Nadir Ali, Moonsiff of Bhawarah, dated 20th February 1846.

Ram Bhorose Singh, Appellant, (Defendant.)

versus

Ajoodeeah Doss, Respondent, (Plaintiff,)

THIS suit was for the recovery of Company's rupees 31-13, being principal and interest on a loan of 30 rupees on bond, dated 18th Assar 1252 Fuslee, to be discharged at the end of Augun 1253 Fuslee. The defendant acknowledged the bond, but averred that he had paid the amount, and held a receipt for the same.

The moonsiff passed a decision in favour of the plaintiff on the grounds : the defendant having acknowledged the execution of the bond, and not producing, after it had been called for, the receipt alleged in the reply.

Against this decision the defendant appealed, urging : being at Mozufferpore, he was unable to file the receipt in the moonsiff's court when called for, but it was now ready for delivery.

COURT.

The alleged receipt was called for, and was not forthcoming, and it appearing an elapse of 12 days occurred after the moonsiff had called for the receipt without filing it, under all these circumstances the appeal is rejected with costs, and moonsiff's decision confirmed.

ZILLAH TWENTY-FOUR PERGUNNAHS.

THE 2D DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

*Appeal from a decision of Mr. A. Davidson, Moonsiff of Sulkeah, .
passed on the 18th of June 1846.*

Bujjookisten Mookerjee, Doorga Doss Mookerjee, Ram Chand Mookerjee, and Sreemuttce Birmoomye Debea, widow of Thakoordoss Mookerjee, deceased, (former Plaintiffs,) Appellants,

versus

Debnath Chatterjee and Kaiturmohun Chatterjee, sons of Kallee-doss Chatterjee, deceased, and another, (former Defendants,)

Respondents.

To assess rent and obtain a cubooleut. The amount of rent rupees 21.

This action was brought by the plaintiffs to assess rent according to Section 9 of Regulation V. of 1812, on the defendants' tenure, consisting of $6\frac{1}{2}$ kottas of ground, whereof plaintiffs say their rights and possession as "shah ryots" or "theekadars" (middlemen) is undisputed, and also on $\frac{1}{2}$ a kotta, which plaintiffs say did not form a portion of defendants' tenure originally, but which they had cunningly got into their hands in 1249. The ground is situated at Sulkeah, pergunnah Pykan, within 5 beegahs and 10 kottas of other land belonging to plaintiffs. In their replication the plaintiffs admit that for 38 or 39 years the predecessors of the defendants, and defendants themselves, have resided on the first mentioned parcel of land, for which they (plaintiffs) demanded no rent, because the plaintiffs' ancestor had permitted his near relation, Hurnath Chatterjee, grandfather of defendants, to reside on the ground without paying rent, which privilege had been hitherto enjoyed by that person's successors. The plaintiffs desire to assess the rent on the 7 kottas, at 3 rupees per kotta, or a yearly jumma of rupees 21.

In their answer the defendants deny that they are at all liable to pay rent or have ever done so before. They plead that Manickram Mookerjee, (grandfather of Doorga Doss and Ram Chand, the plaintiffs,) who was the father of Bujjookisten Mookerjee, the plaintiff, formerly conveyed the entire right in the land, as well as 3 kottas besides, to Hurnath Chatterjee, grandfather of defendants, by deed of gift (which is lost) more than 75 years ago. Under

these circumstances the action now brought cannot, they urge, be sustained.

The moonsiff nonsuited the plaintiffs, being of opinion that they could not bring this action, as they had not possession of the land for 38 or 39 years, and, according to defendants' answer, they had no right to it at all. The moonsiff considered that they ought to have sued for possession in the first place. A copy of a decision, passed by the Court of Sudder Dewanny Adawlut, was filed by the plaintiffs in the moonsiff's court. The case cited was that of Pursunno Coomar Tagore, appellant, *vs.* Ranee Chundreeka, respondent; and the decision therein was passed on the 26th of July 1843.

An appeal is now preferred by the plaintiffs, who submit that if they, from kindness towards their relations, allowed them to hold this land without paying rent, it is not just that now, when they seek to withdraw that privilege and assess rent on it, they are to be prohibited from doing so. They refer to the precedent they cited in the lower court, to show that the moonsiff erred in opinion that they, plaintiffs, appellants, ought in the first instance to have sued for possession of the land, previous to bringing a claim to assess rent on it.

Referring to the notice issued I observe it states that the rent now to be demanded from the defendants, respondents, is yearly rupees 21 for the land, consisting of 7 kottas, which the notice states had not been paid before; "be jumma" are the words made use of in the notice. The defendants, respondents, do not deny that the ground is part of the appellants' tenure; all they say is they have held possession of it by gift, and have not paid rent for 75 years. This is partly admitted by appellants. I can see no reason why, (notwithstanding even if the respondents had possession without paying rent for the long period they assert,) the appellants should not bring this action. They considered they relinquished no future claim by deferring to take or demand rent from the respondents. They make no demand for rent for years past, which would render their claim liable to question, under Regulation II. of 1805. It appears to me that the spirit of the case, Rutten Mune Dosseea, appellant, *versus* Sunkree Dosseea and others, published in page 231 of volume VI. of Sudder Dewanny's Special Reports, indicates that no objection, on the score of limitation, can be raised in this instance. With respect to the opinion of the lower court, that it was requisite, in this case, for the plaintiffs, appellants, to sue for possession prior to bringing an action to assess rent, I consider that the precedent filed shows that such previous suit was not requisite. Therein it appears that a dispute took place between an auction purchaser (at a sale for the recovery of arrears of Government revenue) and the late proprietor of an estate, wherein the latter pleaded that some landed

property, held by her, was not in the possession, or formed part of the estate of the auction purchaser. The Sudder Dewanny Adawlut, in the case cited, ruled that the right of the latter to the ground in dispute was to be investigated, and if his right was ascertained to be vested over the property in dispute, he was to assess rent. Though the rights of a purchaser of an estate, sold by a collector for the recovery of arrears of Government revenue, are greater than those of others, yet I think I may regard this decision as a guide sufficient to warrant me in concluding that, in this instance, there is no necessity that a suit for possession be previously brought and determined, and in directing the lower court to proceed with the trial of the case as it has been brought by the plaintiffs, appellants. I therefore reverse the lower court's decision.

The hearing in this case was completed on the 20th ultimo. Time was taken to consider the judgment, which was not, in consequence, delivered until this date.

THE 2D DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Mr. A. Davidson, Moonsiff of Sulkeah, passed on the 24th of June 1846.

Govind Chunder Pal, (former Plaintiff,) Appellant,

versus

Doolaul Mal and Seedhea Mundul, (former Defendants,) Respondents.

To recover 63 rupees, 12 annas, remaining due, on account of money lent on a bond.

This action was brought to recover the above sum as set forth. It includes interest. The bond was given by the defendants, it is alleged, on the 2d of Assin 1245. Plaintiff states that there was originally lent by him, rupees 50, to the defendants. The interest accruing on that sum is rupees 44, 12 annas, and the defendants, it is further stated, have repaid rupees 31.

In answer the defendants pleaded that there is no foundation for this demand. They never had given the bond, or paid any thing to plaintiff. They say that the claim is got up against them because they will not cultivate indigo for Roy Bycontnath Chowdry, sudder farmer, under the Court of Wards, of the 10 annas' share of pergunnah Pykan. The dewan of that person has, the defendants say, put forward the plaintiff to bring this action.

The moonsiff dismissed the plaint because the three witnesses he examined exhibited contradictions in their evidence, as to the manner the defendants had attached their marks to the bond, and be-

cause the plaintiff, who was questioned in the moonsiff's court as to what date the bond bore, said it was in 1243, whereas in his plaint it is said to bear date 1245. He did not consider the plaintiff in sufficiently affluent circumstances to lend the money as he stated. The moonsiff observed further that the witnesses were unable to say when, or by whom the payments in part liquidation of the sum borrowed were made. The moonsiff awarded damages, equivalent to the claim, to defendants, according to Section 40 of Regulation XXIII. 1814.

In appeal appellant submits that there is no important contradiction to be seen in the evidence of his witnesses, and denies that he is in any way connected with the sudder farmer of the 10 anna's share of pergunnah Pykan; he asserts that he bears no enmity, nor has it been proved that he does, towards the respondents. As to his not having means sufficient to lend the amount stated to them, it will be seen, on referring to a case, No. 106 of 1844 of this moonsiff's court, that he did lend rupees 63, 9 annas, to a party against whom he obtained a decree. The mistake in the date of the bond adverted to in the lower court's decision, was solely owing to his want of recollection, and as he did not see the bond.

With respect to the evidence of the three witnesses Ram Chand Roy, Gopaul Chunder Dey, and Muthoor Bagdee, taken on the part of plaintiff, appellant; who deposed to the loan having been granted and to the execution of the bond, I can observe an inaccuracy in the deposition of one of those witnesses, Ram Chand Roy, who states that both the defendants attached their mark to the bond, whereas the other two say the defendant, respondent, Doolaul, did not merely attach his mark to it, but wrote the letter N (which statement is correct) with his own hand. The witnesses do not assign any reason why these two defendants, respondents, one (Doolaul) a Christian, the other a Hindoo, had joined in borrowing money, and signing a bond together, living as they do at a considerable distance from each other, one in the mouzah of Jyepoor, the other in Rajinderpoor. They are altogether unconnected with each other, of different castes and religions, for as before observed the evidence shows Doolaul to be a Christian and Seedhea a Hindoo. From the evidence of five witnesses on the part of the respondents, it appears they and the dewan of the indigo factory of the sudder farmer, have a quarrel because they refuse to cultivate indigo; and as there is no attempt to show, under these circumstances, what relation the respondents bear to each other, I dismiss this appeal as regards the original claim, but reverse the moonsiff's order for damages.

This case was concluded on the 23d of last month, and since deferred for judgment.

THE 2D DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Mr. A. Davidson, Moonsiff of Sulkeah, passed on the 25th of May 1846.

Ram Coomar Acharj, Nund Coomar Acharj, and others, (former Defendants,) Appellants,
versus

Callydutt Acharj and others, (former Plaintiffs,) Respondents.

FOR possession of land, lakeraj, valued at rupees 36-11 annas.

This action was brought by the plaintiffs to obtain possession of two kottas of land, awarded to the defendants by the magistrate of Howrah, on the 28th of August 1845, according to a decree passed under the provisions of Act IV. of 1840. The plaintiffs allege that the ground is a portion of their ancestral property.

Defendants, in reply, say that the land had been purchased by Joyenarain Acharj, (whose heirs they are,) from Ram Chunder Acharj and others, and they file the deed of sale, executed by the sellers in favor of the purchaser, which document bears date the 14th of Pose 1219 B. S., or 27th of Decemr 1812.

The moonsiff decreed the case without entering fully into its merits, for he was of opinion that the deed of sale filed by the defendants was a forgery, inasmuch as the endorsement of the date of the sale of the stamp, on which the deed was written, was not intelligible to him, as some of the figures of the date appeared to have undergone abrasures, and from an official copy of that document (granted by the magistrate of Howrah, the original having been filed in his court) it appeared that the endorsement of the date of sale of the paper, whereon the defendants' original kubala, or deed of sale, was engrossed, was the 29th of December 1812, or 16th of Pose 1219 B. S. The moonsiff also formed the opinion that the original was a forgery, from the evidence of the mohafiz of the Howrah foudarree court, and of the copyist of the above-mentioned transcript filed by plaintiffs, which went to prove that the copy and the original, as it then was, exactly corresponded.

An appeal is preferred by the defendants from this decision. They repeat that the ground in dispute was truly purchased, in 1219 B. S., by Joyenarain, according to the deed of sale they filed. They urge that the plaintiffs, respondents, adduced no proof in the lower court that they had a right to the ground they claimed, that the moonsiff decided in their favor because he suspected appellants' kubala to be a forgery, but it was made to appear so somewhere, or by some means, with a view to prejudice appellants' claim. Appellants say that the true date of the endorsement is the 11th of Pose 1219, or 24th of December 1812, (and not as the

moonsiff states the 29th of that month,) and that the document itself was executed on the 27th of December 1812, corresponding with the 14th of Pose 1219, or three days after the sale of the paper as indicated by the endorsement. They submit that a fraud of the kind they refer to (by the alteration of dates which was effected by officers of the record department of the magistrate's office at Howrah) was apparent in another case, and to prove this they file a copy of the sudder ameen of this district's roobikarree, dated the 12th of June 1846.

An answer is filed by the respondents to the petition of appeal, wherein they submit that the endorsement of the sale of the stamp paper, used by the appellants, has been altered from the 29th of December 1812, to the 24th of December of that year. Respondents enter, in their answer, into the merits of the case, which I need not refer to, as the moonsiff has not gone into them.

Referring to the deed of sale, which the appellants have filed, I observe that it is dated the 14th of Pose 1219, B. S., or December 27th 1812. The endorsement of the date of the sale of the stamped paper, whereon the deed is engrossed is the 24th of December 1812, corresponding with the 11th of Pose 1219 B. S. But the moonsiff considered the proper date of the endorsement to be the 29th of December 1812, as the copy of the deed filed by the plaintiffs, respondents, exhibited that to be the date of sale of the original paper, whereon the deed was written, and this opinion of the moonsiff was corroborated by the evidence of the foudarree record keeper of Howrah, and of the copyist who transcribed the document for plaintiffs, respondents. From their depositions it appeared that no abrasure, however partial, was visible in the date endorsed as that of the sale of the original document, when the copy was taken. The moonsiff referred to the magistrate, who, in his roobikarree dated April 30th last, informed the moonsiff that he discovered no discrepancy between the date of the deed of sale, and the endorsement of the sale of the stamped paper, or any abrasure, when the deed was filed in his court. Had such been apparent, the magistrate stated he would not have decided the case in appellants' favor. On the 16th ultimo, this appeal having come on, its further hearing was postponed until the original nuthee, in the case tried by the magistrate under Act IV. of 1840, was received from that officer. It has since reached this court, and I referred to it to learn whether, in any way, I could ascertain when the decision was passed, or, pending the case, the alleged alteration in the date was taken hold of; but I cannot gather from these papers that it was—either by appellants' opponents, or by the magistrate. I admit that the Bengalee figure 8 of the date 24th of December 1812, shows it to have been rubbed, but it is quite legible. I consider that it is not improbable that it has been

altered, with the connivance of some one, with a view of defeating the appellants' claim to the ground. By a roobikarree of the sudder ameen of this zillah, dated the 12th of June last, it appears that the dates of a copy of a document, or the dates of the document itself, had been tampered with, (with the intent of serving some party,) when the transcript was given from the Howrah magistrate's records. Further, the copy filed by the respondents in this case, exhibits the date of the endorsement of the sale of the stamp paper whereon the original was engrossed, and, as far as my experience goes, it is most unusual to transcribe such endorsements; indeed on taking the evidence of the nyeb mohafiz, and of a copy writer of this court, who have been employed for many years, they depose that such endorsements are not transcribed. Nor is the copy of the endorsement, on the transcript filed, correct, for it contains the word ত্তি abbreviation for ত্তি before ২৪ which the original does not; and this difference causes me to discredit the evidence of the magistrate's omlah (the record keeper and copy writer) who swear that the copy and original correspond. Under these circumstances, and seeing that the document was not ascertained, or even suspected, to be a forgery when filed in the magistrate's court, I consider that the moonsiff had not sufficient proof before him to pronounce it to be so, or to decree the case in plaintiffs' favor. To arrive at such a decision, in a great measure because the Bengalee figure ৪ appears to be slightly rubbed, or to have undergone an alteration, and because the plaintiffs, respondents, filed a copy of a deed of sale, bearing a different date of sale of the stamp of the original, which particular in a copy is a most unusual and suspicious circumstance; appears to me fraught with hardship to the appellants. I accordingly return the case to be tried on its merits; but it is not the intent of this decision that no further proof, regarding the forgery, which may be considered necessary, is to be called for by the lower court.

THE 10TH DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Doorgapersaud Roy, Moonsiff of Dum Duma, passed on the 26th of June 1826.

Kaoorce Karregur, (former Defendant,) Appellant,

versus

Tarachund Burdhun, (former Plaintiff,) Respondent.

FOR 31 rupees, due on account of money lent on a bond.

The plaintiff brought this action against Kabil Karregur and Soonder Karregur, for the above sum, including interest, on 25

rupees lent on a bond on the 15th of Pose 1247, to be repaid in Aughun 1248; 9 rupees on account of interest had been received by the plaintiff.

In answer the defendant, styling himself Kaooree Karregur, denied that he owed plaintiff any thing. He said that on the date of the bond he was in jail at Baraset. He urges that the action originates in plaintiff's desire to defeat a just claim of defendant. The other defendant, Soonder, filed no answer.

The moonsiff decreed the case, the defendant having failed to adduce any proof in support of his answer.

Kaooree Karregur appeals, making the statement he submitted in the lower court; further urging that it was owing to his vakcel's absence at the judge's court that his answer was not proved, and repeating that on the date of the bond he was in the Baraset jail.

On referring to the records of this court it was ascertained by a comparison of dates that the absence of the vakeel of defendant, appellant, at the judge's court, did not interfere with the appellant's case, and on the 23d ultimo the appellant was desired, in three days' time, to file documents to show that he was in jail on the date of the bond. He has failed to do so up to this time. As he has done so, and not attempted to prove in the lower court that his name is Kaooree, instead of Kabil, in which name he gave the bond, the execution of which, and the payment of the money, has been proved by plaintiff's, respondent's, witnesses, I dismiss this appeal.

THE 14TH DECEMBER 1846.

PRESENT: ROBERT^o TORRENS, JUDGE.

Appeal from a decision of Mr. J. Weston, Sudder Ameen, passed on the 22nd of July 1846.

Ram Sagur Koonadoo, (former Plaintiff,) Appellant,

versus

Praunkisten Ghose, Goluck Chunder Ghose, Rajkisten Ghose, and Ruggoonauth Ghose, (former Defendants,) Respondents.

To recover rupees 464, 14 as. 8 gas. 3 cee., balance of account.

The plaintiff brought this action to recover money due by Saam Chand Ghose, who died on the 1st of Aughun 1252 B. S., (and whose heirs and sons are the first three mentioned respondents,) and also by Ruggoonauth Ghose, likewise a son and partner of Saam Chand Ghose, on account of goods bought by those two persons from the plaintiff, from the 27th of Joiste 1245, until the 24th of Bhadoon 1251. The plaintiff states that on a comparison of accounts at plaintiff's place of business in Wattgunge, it resulted that 436 Sicca rupees 12 as. 11 gas. 1 cee. were due by

Saam Chand and Ruggoonauth. The plaintiff states that this comparison of accounts took place in the presence of those two persons, and of other respectable individuals. Since then the two individuals above-named have ceased to purchase goods from the plaintiff, and on the 1st of Bysack 1252, plaintiff says, 1 Company's Rupee, or 15 annas, was paid by Goluck Chunder, the defendant, leaving due Sicca rupees 435, 13 as. 11 gas. 1 cee., or Company's rupees 464-14-5, as stated above. The comparison of accounts took place on the 24th of Bhadoon 1251.

Ruggoonauth Ghose, in reply, admitted having bought goods from the plaintiff along with his partner, his father, Saam Chand Ghose. He stated that the plaintiff received rupees 1309, 3 annas, 10 gundahs, on the accounts being made out, up to the end of 1250 B. S., when there remained due only 32 rupees, 6 annas, 11 gundahs, 1 cowree. A correct statement of their account was, defendant says, furnished by the gomashah, Saam Chand Sircar, of the plaintiff, which defendant urges will corroborate this statement. A memorandum, defendant further states, was sent whenever goods were required and obtained from plaintiff, wherein a note of their despatch was made. This memorandum is now in the plaintiff's hands.

The other three defendants, described as sons of Saam Chand Ghose, deceased, and brothers of Ruggoonauth, deny that they had any thing to say to their father's alleged purchasers, and state that they inherited no portion of his estate.

The sudder ameen decreed 32 rupees, 6 annas, 11 gundahs, 1 cowree, only, according to Ruggoonauth's answer, as he was of opinion that the witnesses, who are servants of the plaintiff, (and whom he considered to have been too frequently in the habit of deposing in courts of justice,) did not prove the amount claimed by plaintiff, to be due; he remarked that no signature, by defendant, to the balance sheet of the account, was apparent. He further was of opinion that the case, published in page 271 of volume II. of Sudder Dewanny Adawlut's Reports, rendered plaintiff's claim inadmissible merely on the proof he adduced, and that the evidence brought forward by Ruggoonauth, the defendant, made good the statements contained in his answer.

In appeal the appellant, plaintiff, urges that he carries on a very extensive business, that when transactions, connected therewith, take place, he cannot readily get witnesses thereto, besides those persons who are his servants, and who deposed on his behalf in the lower court, and this, he submits, will account for those persons having often deposed in support of his claims in other cases. He urges that his gomashah Saam Chand Sircar, as defendant alleges, never gave any copy or statement of the accounts, and that that person had been discharged from his service and never signed the account produced by the defendants, respondents, while employed by appellant.

When this appeal was last heard, on the 24th ultimo, the appellant was desired to file his khattas for 1246, 47, 48, 49, 50, (he had filed those for 1245 and for 1251 in the sudder ameen's court,) in order, if possible, that the true state of the accounts might be ascertained, and whether any acknowledgment was apparent therein of the debt alleged to be due to appellant. No such acknowledgment can be gathered from the books which have been put in. It appears from them that up to the end of 1250 B. S., the demand against Ruggoonauth and Saam Chand Ghose amounted to sicca rupees 1341, 10 annas, 1 gunda, 1 cowree, of which sicca rupees 809, 3 annas, 10 gundas, had been paid up to the 26th of Fagoon 1250 B. S., and sicca rupees 532, 6 annas, 11 gundas, 1 cowree were then still due to appellant. From the khatta for 1251 B. S., filed by appellant, it appears 95 rupees, 10 annas were paid by Ruggoonauth, during the period intervening between Bysack and Bhadoon of that year, leaving due Sicca rupees (after deducting the 15 annas paid by Goluck) 435, 13 annas, 11 gundas, 1 cowree, or Company's rupees 464-14-5 as stated in the plaint.

Referring to the account filed by the respondents (alleged by them to have been prepared by Saam Chand Sircar gomashah of respondents) it appears that, with the exception of two payments to appellant, entered in that account, the items therein, and those apparent in the appellant's ledgers, filed, correspond. I need not advert to the credit for the sum of 95 rupees, 10 annas, as that amount appears in the appellant's books for 1251, and the respondents' statement, or account, furnished it is said by Saam Chand Sircar, does not extend beyond 1250. The two payments I refer to are noted as having been made on the 28th of Maug 1250 and on the 26th of Fagoon of the same year. The amount paid on the former date appears to have been rupees 200 cash, when a bank note for 50 rupees (credited in plaintiff's ledgers) was also paid, and 328 rupees, 2 annas, 8 gundahs, cash, were paid on the last mentioned date, when a bank note for 100 rupees (likewise credited in plaintiff's appellant's ledgers) was also paid, making the aggregate of the payments, in silver, 528 rupees, 2 annas, 8 gundahs; and if the payment of 95 rupees in 1251 (admitted by appellant) is deducted, the remainder will be Sicca rupees 436, 12 annas, 11 gundahs, 1 cowrie; and 15 annas are stated by the appellant to have been paid in 1252, which leaves the balance due as entered in the plaint. It appears to me that if the respondents' payments on the above dates can be clearly proved, they must be exonerated from plaintiff's claim, otherwise they must make good its amount.

To prove the payment as urged by the respondents, they have adduced two witnesses by name Seeb Chunder Ghose and Cazez Mobaruk Allee. The first named individual says that in Maug, or Fagoon, he accidentally met the respondent Ruggoonauth on the road; Ruggoonauth asked him to accompany him; he did so, and

saw either the sum of rupees 424, or 428 rupees, paid by Ruggoonauth to Saam Sircar, plaintiff's, appellant's, gomashlah, in plaintiff's, appellant's, house of business. The gomashlah then gave an account (the one filed by respondent) to Ruggoonauth. The witness says, what is contrary to the fact, that this person, Saam Sircar signed the account; further that it was only made out with regard to Ruggoonauth's transactions, which is also contrary to fact, for the account filed by respondents has reference to both Ruggoonauth's and Saam Chand Ghose's business. The witness stated at first that the account delivered to Ruggoonauth was altogether written by Saam Sircar, and afterwards contradicted himself, and said only a portion of it was written by him. He only speaks of one payment (instead of two as entered in the account) having been made by Ruggoonauth Ghose, and said he was then accompanied by one Cazeer Mobaruk Allee, who also gave evidence on respondent's part. The last mentioned person says he did accompany Ruggoonauth and the before mentioned witness to the shop, or place of business of the plaintiff, appellant, that he saw the sum stated by that witness paid either some day in Fagoon, or in Maug, and remarked that Saam Sircar gave an account, which he partly then wrote out, to Ruggoonauth. The witness only speaks of one payment having been made by Ruggoonauth. Considering the evidence of those two persons it appears to me they do not credibly support the allegation of the respondent Ruggoonauth that two separate payments (in cash) of Sicca rupees 200, and of Sicca rupees 328, 2 annas, 8 gundahs on the 28th of Maug and 26th of Fagoon 1250, were made.

In support of the appellants' claim, the witnesses Bistennauth Sircar, Muddoosooden Bagdee, Radanauth Manjee, Bulram Dey, and Bulram Nundee, depose to the accounts having been compared and made up to the year 1251, in the presence of Saam Chand Ghose deceased and of Ruggoonauth Ghose, and to the sum of Sicca rupees 436, 12 annas, 11 gundahs, 1 cowree, being then ascertained to be due by those persons, of which 15 annas, or 1 Company's rupee, was paid in Bysack, 1252. These witnesses have deposed that the khattas filed by the appellant contain true accounts of the transactions carried on between the appellant and the respondent Ruggoonauth with his father Saam Chand Ghose. To me it appears that the precedent (which rules that entries in a banker's books unsupported by other proof are not sufficient to prove a debt) cited by the sudder ameen, does not bar the complete investigation and decision of this case. There is corroboration of the appellant's, plaintiff's, claim to be gathered in respondent's Ruggoonauth's answer, and in the account or statement filed by that person, which he says was furnished to him by the appellant's gomashlah. All, in my opinion, requisite in this

case (every other item of transaction being admitted) to be enquired into, is whether payments of rupees 200 and 328-2 annas, 8 gundahs, were made on the 28th of Maug, and 26th of Fagoon 1250, by Ruggoonauth the respondent. The evidence of the two witnesses that person has adduced has altogether failed to show that those payments were made. I do not agree in opinion that the appellant's witnesses are unworthy of credit because they are his servants. He admits they are so; and urges that he is often obliged to have recourse to their testimony, in cases in court, arising from his extensive business. It is not, I think, just to reject their evidence considering that they have deposed only to most probable facts, and that their testimony is met only by the unsatisfactory evidence of the respondent's two witnesses. Under these circumstances, therefore, I am of opinion that the plaintiff is entitled to the sum he claims, but as it has not been satisfactorily proved that the respondents, besides Ruggoonauth, are liable as successors and inheritors of their father's estate, I only decree the case against Ruggoonauth Ghose, and the estate of Saam Chand Ghose, his father and partner when the transactions set forth took place.

The hearing in this case was brought to a conclusion on the 10th of this month, and its decision deferred, until this date, in order to prepare the written judgment.

THE 14TH DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Roy Hur Chunder Ghose, Bahadoor, Principal Sudder Ameen, passed on the 3d of June 1846.

Thomas Reeves, (former Defendant,) Appellant,

versus

Oojaghar Sing, (former Plaintiff,) Respondent.

To recover rupees 1027, money due to plaintiff for providing divers for defendant's service.

This action was instituted on the above grounds, plaintiff alleging that the defendant had agreed to pay him and one Ram Surn Chobaie rupees 150 per mensem, for furnishing him with 30 "Doobarroos" or divers, as long as necessary, for service in the defendant's dockyard at Sulkeah; which persons, plaintiff states, he did provide from the 25th of April 1844, until the 10th of December of that year. The plaintiff admits having received 180 rupees, on account of the provision he made of those persons, from the 25th of April until the 31st of May 1844, but the remainder, due from June until the 10th of December 1844, not being paid to him, he has recourse to this action. He states that rupees 950 is due to him, and demands interest thereon, amounting to

rupees 77. Plaintiff states that Ram Surn's name needlessly appears in this business, for really he had nothing to say to the contract. Nevertheless he sued his brother, Ram Lall, as Ram Surn's heir; and subsequently, in a supplementary plaint, he sued Ram Surn's widow, on whom notice of this action was served at Benares, where she resides.

In answer the defendant stated that the plaintiff did not make the agreement to furnish divers on the 25th but contracted to do so on and from the 26th of April 1844, to the effect that he would keep 30 divers, day and night, for service in the defendant's dockyard, which defendant states he failed to do, and thus obliged defendant to employ many laborers and artisans in the dockyard at a great expense. Further the defendant urges that at different times he had paid rupees 280 to the plaintiff, for part performance of his agreement. Defendant adds that he did complain against the plaintiff, in the foudaree court of Howrah, for absconding from his duty, and was about to bring an action in the civil court against him, which now the plaintiff, by instituting this suit, has cunningly anticipated. Further the defendant urges that it was not only plaintiff, but Ram Surn Chobaie, as well, who entered into the agreement, and that he cannot solely bring this action, but that he ought to have been joined in so doing by that person's (who is dead) widow and heir, or have made her a defendant in the case.

The principal sudder ameen decreed the case, but for the principal of the sum, only, claimed.

Defendant appeals from this award, and urges that the agreement entered into between himself and the respondent, took place on the 26th of April 1844. That it was not acted up to by the respondent, whereby a loss of 600 rupees was incurred by appellant. He remarks that the principal sudder ameen objected to his witnesses (adduced to prove, among other things, that this loss was incurred) because they could not specify the dates, and amount, on which the losses occurred. The appellant urges that, as the witnesses were not writers in his office, they could not make such a specification in their deposition. He also objects to no credit being allowed, by the lower court, for 100 rupees he paid, in addition to the 180 rupees respondent admits having received, and further he submits that the accounts and papers filed by the respondent are fabricated to support this claim, and not supported by credible testimony.

In the lower court the plaintiff, respondent, adduced five witnesses to prove his claim, and filed "khattas" showing the transactions, between himself and the divers he provided for the appellant's service, from the 25th of April 1844 until the 10th of December of the same year. Also an accurate list specifying the names of the divers he furnished, which shows a memorandum of

the daily attendance of those persons at the appellant's dock-yard. The respondent also filed a copy of a petition he had presented in the court of the magistrate of Howrah, on the 12th of December 1844, praying that the amount due to him by defendant, appellant, might be awarded by that authority.

Referring to the evidence adduced by the appellant, when defendant in the lower court, I observe that Muddoosooden Sirdar states that for one month, the plaintiff acted fully up to his agreement, and furnished the complement of men. After that, the witness says, the appellant, defendant, was obliged to employ his own men, in addition to some, not the full number, provided by the respondent. Kala Chand Sirdar states that plaintiff acted completely up to the terms in the agreement for 6 weeks, and after that period the defendant, appellant, employed his own men. Govind Mundle, Ram Kulp Tantee, Ram Hurree, Pailaram, Kamalooden, Kala Chand Kolea, Ram Chunder Chuckerbuttee, and Ramgopal Pal, depose to the engagement entered into by the plaintiff, respondent, being only completely fulfilled for a short period, but their evidence is dissimilar and contradictory as to the exact time up to which the defendant did act up to the conditions of the agreement, by providing the thirty divers. Some say the agreement was only observed for one month, some for six weeks, and others for two months. The witnesses say that defendant, appellant, was obliged to employ his own men in the dockyard, along with those, a few, whom plaintiff provided. The witnesses can, none of them, specify the dates of the employment of those men, defendant, appellant, was obliged to bring, or the number of them, or the sums paid them, or the dates on which less than the full complement of divers were provided by the respondent. Nor does the defendant, appellant, either in the lower or this court, specify those particulars. He only filed in the principal suddur ameen's court an estimate book, a cash book, and two Bengalee ledgers, for 1844-45; but the dates of entries of payments to divers employed on account of the plaintiff's, respondent's, failure to fulfil his agreement, were not indicated in the lower court, nor have any of the accounts, filed by appellant, been identified by any of the ten witnesses he has had examined, neither can the appellant's pleader, on being questioned, point out a note of any payments made to divers employed by appellant, during the period referred to in plaintiff's contract, which appellant has filed, and which, in my mind, stipulates to provide 30 divers on and from the 25th of April 1844, and not to commence doing so on the 26th of that month as appellant urges. I further have to observe that it appears, from appellant's documents, that the appellant, defendant, did petition the magistrate of Howrah, on the 12th of December 1844, stating that the divers on "yesterday night," that is the 11th, or it may be the 10th of December, had all been absent, and prayed that they be

apprehended and punished. This statement is altogether opposed to defendant's, appellant's, answer in the lower court and to his petition of appeal, and corroborates the statement; very nearly, contained in the plaint, that the agreement was acted up to until the 10th of December. And it further appears, from the same petition, that only on one previous occasion was loss incurred by the neglect of the divers who had been provided by respondent. As to the payment of rupees 280, alleged by defendant, appellant, to have been made to the respondent, I cannot find that this allegation is satisfactorily supported by evidence; for Kala Chand Sirdar says that rupees 280 were paid, by defendant, to plaintiff, Ram Kulp Tantee says only 270 rupees was the sum he paid, and Pailaram Bagdee says 240 was the sum defendant, appellant, paid to respondent. The other witnesses of the appellant are silent regarding any payment, and no receipt has been filed to support the statement that the alleged amount had been liquidated.

As regards the respondent's claim, I observe that on the 13th of December 1844, the plaintiff, respondent, petitioned the magistrate of Howrah, stating that defendant, appellant, had beaten and dismissed him and the divers he provided, on the 25th of Aughun 1251, or 9th of December 1844, and prayed to have the money (rupees 950) awarded him which was due by appellant on account of respondent's performance of his agreement described in this case. The magistrate, on the 13th of December, by an order on that petition, referred the respondent to the civil court. In the lower court the respondent filed four books of his own accounts, showing that he did provide divers, according to his contract, from the 25th of April until the 10th of December 1844. Petumher, Sadoo Khan, Kanye Oopadnya, Kuleenmodeen, and Ooker Doss, respondent's witnesses, depose to the accounts filed exhibiting a true statement of the daily attendance of the divers, who were provided, it appears from these accounts, in much greater strength than was stipulated for. Taking therefore into consideration the proof adduced by the respondent, and the clear admission made in the petition presented in the foudjarree court by the appellant, that the divers absconded only on the 10th or 11th of December, I think it just to decree that up to the 9th of December 1844, inclusive, the respondent be reimbursed, and that rupees nine hundred and forty-five be awarded him. I deem it proper only to mention up to the 9th of December 1844, for the respondent stated, by petition to the magistrate of Howrah, that on that day the appellant expelled him and his divers from his employ. I accordingly, instead of 950 rupees awarded by the principal sudder ameen, order that the plaintiff, respondent, receive the above mentioned sum, so far modifying the decision of the lower court.

This case was brought to a final hearing on the 12th instant, and its decision deferred until this date to prepare the written judgment.

THE 14TH DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Mr. A. Davidson, Moonsiff of Sulkeah, passed on the 29th of June 1846.

Ram Burmo Roy, (former Plaintiff,) Appellant,

versus

Narain Mundul, (former Defendant,) Respondent.

FOR 127 rupees, 9 annas, due on a bond.

This suit was instituted for the recovery of the above sum, which includes rupees 99, principal, lent by plaintiff to defendant, on a bond dated the 26th of Srabun 1250, and interest thereon amounting to 28 rupees, 9 annas, 4 pie. The plaintiff states that the fixed residence of the defendant is at the village of Khulna, within the jurisdiction of Hooghly, that the defendant at present resides in Calcutta, but that the loan was made at Sulkeah.

Defendant in answer denies that he borrowed the money. He states that on the date of the bond he was ill at his house at Khulna. He further states that he had a quarrel with one Gorachand Roy, a resident of that place, who has instigated the plaintiff to bring this false action against him, and that his real name is not Narain Mundul, but Ram Narain Mundul.

The moonsiff dismissed the case, as he considered the plaintiff's witnesses did not satisfactorily prove the transaction set forth in the plaint.

The plaintiff appeals from this decision, and submits that his witnesses did sufficiently make out the justice of his demand; and prays that other individuals present when the loan was made, though their names did not appear as witnesses to the bond, may be subpoenaed to give evidence.

The plaintiff, appellant, put in, in the lower court, a khatta exhibiting an entry of the loan having been made as he has stated, and adduced five witnesses of the execution of the bond, as well as two others to prove that the defendant, respondent, had offered to come to a settlement with regard to this demand. I have heard the evidence of the witnesses to the bond adduced by plaintiff, appellant, and observe that, among them, Ram Chunder Chuckerbuttee states that he saw the bond written out, but saw no consideration, or money, given to the defendant. Muthoor Doss, another of plaintiff's, appellant's, witnesses, says he knows nothing about the transaction whatever: a third wit-

ness, Kumal, states that he did put his name to the bond, but he had at first declined to do so, because the defendant was not present; and he says as the appellant urged him to let his name appear as a witness, he did so, but that he never saw the defendant, respondent, all the time he was present. There remains only two witnesses who have deposed to the due execution of the bond, and to the loan having been paid, but one of those persons, Tarachand Bagdee, is a servant of the plaintiff, appellant. The defendant, respondent, adduced witnesses to prove the enmity borne by Gorachand Roy towards him, and to his having been at his house on the date of the bond. The witnesses he has adduced, also depose to the respondent's real name being Ram Narain, and not Narain Mundul. I cannot therefore, considering the imperfect proof adduced by the appellant, when plaintiff in the lower court, now see any necessity to call for further evidence as he prays, and I dismiss this appeal.

THE 15TH DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Mr. A. Davidson, Moonsiff of Sulkeah, passed on the 29th of June 1846.

Koodhee Dossee, (former Plaintiff,) Appellant,

versus.

Baboo Manjee, (former Defendant,) Respondent.

To recover the amount of an instalment bond, for 31 rupees, 7 annas, given on account of arrears of rent.

This debt consisted of rupees 25, for which an instalment bond was given, and interest thereon amounting to 6 rupees, 7 annas. The plaintiff stated that the kistbundee, or instalment bond, was given on account of rent due up to the 21st of Falgoon 1249, (the date of the bond,) by the defendant. This arrear then amounted to 36 rupees, 7 annas, 17 gundahs, for 4 kottahs of land, in Sulkeah, situated on plaintiff's lakeraj property. Of this sum 10 rupees were paid on the date of the kistbundee, and 1 rupee, 7 annas, 17 gundahs were remitted, the bond being given for the remainder. None of the payments, as stipulated, have been made, and therefore plaintiff has recourse to the civil court to enforce her claim.

In answer the defendant alleged that he never gave any instalment bond, as set forth. If he had done so such a document would bear his signature in full in the Nagree character, instead of only the Nagree letter न which is on the bond and alleged to be defendant's mark. The defendant denies being the ryot of the plaintiff, but says that he pays rent direct to the zameendars of pergunnah Pykan, and that the plaintiff now has no lakeraj posses-

sion, inasmuch as what she had was long since resumed by those zameendars.

The moonsiff dismissed the case. He was of opinion that the evidence adduced did not support the claim. He considered it to have been proved that the defendant was in the habit of signing his name in full, in the Nagree character (instead of merely affixing a mark,) which he did in the moonsiff's presence for the moonsiff's satisfaction; and the moonsiff remarked that the cuboolcut, or agreement, on which the allegation of this defendant being plaintiff's ryot was founded, had not been clearly proved when filed in a summary suit for rent tried in the collector's court.

In appeal the plaintiff urges that the bond was proved by her witnesses to have been given by the respondent. She refers to other documents, filed with this case, to show that the defendant, respondent, was only in the habit, up to the date of the bond, of affixing his mark to deeds and papers, and refers to admissions made, some time since, in the moonsiff's and in the collector's courts, that respondent had been in the habit of paying rent for the land, on account of arrears whereof being due this kistbundec was taken from the respondent.

The appellant adduced five witnesses in the lower court to prove that the defendant, respondent, did give the kistbundec, which, on being shown them, they identified. I observe also that in the case, No. 560, of this moonsiff's court, the present appellant was plaintiff *versus* this respondent, and a cuboolcut filed therein, and given by the latter to the appellant, only bears the respondent's mark; and, on referring to the decision passed in that case, I observe that the respondent admitted the terms written in that cuboolcut. Further I remark that in a case decided on the 29th of April 1845, wherein a claim for rent under Regulation V. of 1812, was brought by this appellant *versus* this respondent and others, it was ascertained that the respondent did hold land from the plaintiff, appellant, as set forth in the plaint herein filed; and it is clearly stated in the decision passed under the above Regulation, that this ryot was resident on appellant's land. Besides, I have to remark that in appeal the appellant has filed a copy of a decision, passed by the moonsiff of Sulkeah on the 21st of February 1840, wherein Rammohun Janna was plaintiff, and appellant was defendant, and from that it plainly appears that the present respondent gave evidence on appellant's behalf in that case, and deposed that he was unable to write. The moonsiff formed his opinion that the respondent could write his name in Nagree from a copy of a vakalutnamah filed in the case, No. 560, (which I have before referred to,) and also because the vakalutnamah given in this case when before him, as well as the former one, bear the respondent's signature, and because the respondent wrote his name in the moonsiff's presence. One Kailaram Ghose is adduced

to prove that the respondent did hold only land from the zameendars of Pykan, but he cannot, though he says he is those zameendars' gomashtah, state how much land, or at what rent, the respondent holds, or since when he has held the land. Another witness, Buxoo jamadar, who is those zameendars' servant, says the respondent does hold his land from them, instead of from the appellant; but admits that Zalim Sing, appellant's husband, had owned the ground, within which respondents' tenure is situated, until the zameendars took it from him. It is to be remarked that both these witnesses are the zameendars' servants, who are greatly interested in defeating the appellant's demand, and who are desirous of obtaining the respondent's rent, instead of allowing him to pay it to the appellant as a ryot on the appellant's lakeraj property. It is an easy matter for any party to learn a few letters either of Bengalee or Nagree, and write them down with a view of disproving a claim, such as the appellant makes; but as her witnesses have clearly proved that the instalment bond was given as set forth in her plaint, as it has been made apparent that the respondent, for a long time, has held land from the appellant, which occasioned her to receive the kistbunder for the arrears due on account of that tenure, and as the proof adduced by the defendant, respondent, in support of the statements contained in his answer is very imperfect, and furnished by servants of the interested zameendars, I decree this appeal.

THE 15TH DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Mr. J. Weston, Shudder Moonsiff, passed on the 10th of July 1846.

Isser Chunder Ghose, (former Defendant,) Appellant,
versus

Bunmallee Doss Podar, (former Plaintiff,) Respondent.

To recover 13 rupees, 1 anna, 10 gundas balance of account.

The above sum was claimed on account of firewood sold to defendant. The plaintiff had been in the habit of supplying the defendant up to the end of 1250, and on the 21st of Bysack 1251, it was ascertained that 21 rupees, 1 anna, 10 gundas were due to the plaintiff. On the 20th of Maug 1252, 8 rupees, the plaintiff states, were paid, and the remainder, 13 rupees, 1 anna, 10 gundas, not being defrayed, notwithstanding the plaintiff's repeated applications to the defendant for it, he is obliged to institute this action. The plaintiff states that all payments and deliveries of wood, are noted in his accounts, which exhibit no payment after the last mentioned date.

Defendant says, in answer, that plaintiff's statements are all correct, except that he, defendant, did, on the 25th of Maug 1252, pay rupees 11 to the plaintiff: and there is now due only 2 rupees, 1 anna, 10 gundas. Defendant admits that no entry was made of this payment in the plaintiff's books, but produces an account of his own wherein it is apparent. He further urges that the plaintiff bears enmity towards him on account of a woman of loose character, who is plaintiff's mistress, and whom defendant has caused to be sent away from his neighbourhood. On this account he has brought forward this false demand.

The moonsiff decreed the suit for the entire sum claimed, for the plaintiff proved the debt by his books of account, and by the evidence of three witnesses. It appeared to him, though two witnesses were brought forward by the defendant to support his statement, the account produced in corroboration of it was prepared for this occasion.

In appeal defendant sets forth the same statements as those contained in his answer in the lower court, and submits that he made no alterations in his account books with a view of defeating this claim. Appellant urges that his two witnesses did prove his plea of having paid 11 rupees, and prays that others, on his list of witnesses filed in the lower court, and whom he did not there cause to attend, may be subpoenaed.

Referring to the evidence in this case which the plaintiff adduced, I observe it is proved that the sum claimed by plaintiff was due to him after the accounts of both parties were closed; and except the sum of 11 rupees alleged by the defendant to have been paid, all payments have regularly been entered in respondent's accounts, which have been filed. The evidence of defendant's, appellant's, witnesses does not prove that any enmity exists between the parties. And under these circumstances I see no reason to direct the attendance of further witnesses of defendant, appellant (whom he might have brought forward in the moonsiff's court,) or to interfere with the decision passed below, and dismiss this appeal.

THE 16TH DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

*Appeal from a decision of Tarachand Dey, Moonsiff of Manicktullah,
passed on the 9th July 1846.*

Dooknee Beebee, (mother of Sheik Nusseeroodeen, a Defendant,)
Busseeroodeen, and Baichnee Beebee, (former Defendants,)
Appellants,

versus

Sheik Jakur, father and guardian of the minor Musst. Nusseemoonissa, *alias* Pootee, (former Plaintiffs,) Respondents.

To recover the value of ornaments and effects, amounting to rupees 129, 4 annas.

The plaintiff stated that he is father and guardian of the minor female, who had espoused the defendant, Sheik Nusseeroodeen. She obtained from that person various ornaments with her settlement and also from her father, the plaintiff, as well as furniture and domestic utensils. She was taken to reside at Nusseeroodeen's house, and there subjected to much illtreatment by that person, (who is a drunkard, plaintiff states,) and his family. Nusseeroodeen married another wife. Nusseemoonissa's parents accordingly interfered, and brought her back to their house. As none of her ornaments, even those on her person, or any of her property, was sent with her, the plaintiff, on behalf of his daughter, has recourse to this action. He sues Nusseeroodeen, Dooknee Beebee, Nusseeroodeen's mother, and the brother and sister of that person, by name Busseeroodeen and Baichnee Beebee, who had been parties to the maltreatment inflicted on plaintiff's daughter, and to the detention of her property.

No answer was filed by defendants. They failed to attend in the lower court.

The moonsiff decreed the case for the sum claimed, as he considered that the plaintiff satisfactorily proved his statements.

In appeal appellants urge that notice, as prescribed by law, was not served, or attempted to be served, on them. They submit that the claim was brought against them because Nusseeroodeen had complained, in the foyjdaree court, against plaintiff, for assaulting him, when seeking to get back his wife from plaintiff's house, and had a fine imposed on the plaintiff. Appellants further urge that, when plaintiff's daughter was sent back to her father's, the ornaments belonging to her were also sent. She had no furniture or domestic utensils given her at all. Nusseeroodeen filed a petition, after the other defendants preferred their appeal, saying that he is now a prisoner in the criminal jail of the 24 Pargunnahs, having been convicted of theft, on a false charge brought against him at the respondent's instigation, and therefore he could not join in the appeal.

Referring to the evidence taken to prove the issue of the notice, and of the proclamation being put up at the defendants' appellants' residence, I observe that three witnesses have signed an acknowledgment that they had been duly issued and put up. One witness, Jakur Chowkeedar, was not examined at all on the subject. The other two did depose to the issue and publication of the proclamation; they say, however, that they cannot state the name of the person who wrote the acknowledgment of those notices being taken out, and it appears not improbable that the writer was a stranger and sent by the respondent to write out false acknowledgments. I further remark that the witnesses to the acknowledgments are inhabitants of a different village to that in which the defendants, appellants, reside, and I am of opinion that if either

the notice, or the proclamation had been issued, or published, according to law, the witnesses thereof would have been inhabitants of the appellants, defendants, own village. I do not therefore consider that the notice and the proclamation are satisfactorily proved to have been issued and put up, and I remand the case for the moonsiff to try again.

THE 17TH DECEMBER 1846.

PRESENT: ROBERT TORRENS, JUDGE.

Appeal from a decision of Baboo Gungagovind Soom, Moonsiff of Pautterghottah, passed on the 28th of July 1846.

Moonshee Muneeroodeen, (original Plaintiff,) after his death, Emam Allee, Abdool Summud, and Towussil Allee, (former Plaintiffs,) Appellants,

versus

Sheik Etayutoolla, Tusleeloonissa Beebec, (widow and heir of Nisurallee, Defendant, deceased,) Ataoohluk, and others, (former Defendants,) Respondents.

For rupees 58, 11 annas, 11 gundahs, 1 cowrie.

This action was brought, the plaintiffs alleging that the defendants, on the 14th of Srabun 1251, had cut and appropriated trees growing on the banks of a tank, called Poqee Pooker, at Oothurhauth, pergunnah Anwurpoor. The trees, the plaintiffs state, grew on their share, consisting of 2 annas, which they had purchased, of that village, on the 11th of Chyete 1243, from Jumeet Oonissa Beebec; and they filed a kubala of that date in support of this statement, which was registered by the pergunnah kazee, and attested by twenty-two witnesses. The plaintiffs pray for the value of the property thus taken, and that their right to the 2 annas share described, in virtue of their purchase, may be enquired into, and adjudged to them.

Only two of the defendants filed answers to the plaint. Nisurallee stated that he had purchased the ground whereon the trees grew, from Etayutoolla, the defendant, on the 25th of Assar 1250, and that plaintiffs have no right whatever to it. The defendant, Ataoohluk, stated that the land and trees truly belonged to the plaintiffs in virtue of their purchase, and, he further stated, that the other defendants did cut down, and appropriate, the trees referred to in the plaint. As defendant states that this was done by his order, he admits himself to be liable for 6 rupees of the claim.

The moonsiff dismissed the case, as he was of opinion that the kubala filed by the plaintiffs was a forgery, inasmuch as one of the witnesses to it, among three whom the plaintiffs brought forward in the lower court, was proved to have been a prisoner confined in the criminal jail of Baraset on the date of the kubala. This per-

son, Hissamooddeen Mundul, was charged with, and eventually convicted of cattle stealing. The moonsiff heard the evidence of the kazee of the pergunnah, who had registered the deed of sale, or kubala, filed by plaintiffs, and who produced the register book containing a copy of it. The moonsiff remarked that the names of eighteen witnesses in the copy made in the kazee's register, are identical with those of the same number, whose names are written on the original, but that the number of witnesses whose names are on the latter is increased, by five over those enumerated on the copy in the kazee's register book.

As under these circumstances the claim appeared to the moonsiff to be founded on a gross forgery, he dismissed it, having reported the case to this court, and the plaintiffs were ordered to find security (which they did) to appear, when called on, to answer to the charge of filing a forged deed in the moonsiff's court.

An appeal is now preferred by the plaintiffs, and, pending its decision, the prosecution of the charge for forgery remained in abeyance. The appellants submit that Hissamooddeen Mundul, though confined in jail at Baraset, at the time the deed was executed, and which he truly did attest, was only a prisoner in the hajut tuzveez on a charge of cattle stealing. He was not convicted until after, on the 19th of Chytr 1243 B. S.; and on the date of the bond, Hissamooddeen had gone to visit his daughter, who was then seriously ill in consequence of the bite of a snake. Thus, and as the jail is close to Hissamooddeen's house, he had opportunity of becoming a witness to the deed.

An answer to the petition of appeal was filed by the widow Tusleeloonissa, of Nisgurallee, who demised while the case was pending in the lower court. I deem it unnecessary to go now through the statements made in that person's answer.

Referring to the kubala or deed of sale filed by the plaintiffs, which is described in the plaint, I observe that it bears the names of twenty-two persons as witnesses to the purchase, by the appellants' father, of the ground they claim, in which the trees alleged to have been cut down and appropriated grew, from Jumceut Oonissa. That deed was registered on the 15th of Chytr 1243 B. S., by the pergunnah kazee, who gave his evidence regarding the registry. In the register book of that officer, however, the names of eighteen witnesses only appear. The names of five persons, Hissamooddeen, Hidayet Allee, Tosudduk Hossein, Rusaloodeen, and Assudoojumma, are added to the document filed in the moonsiff's court. Of the eighteen whose names appear as witnesses on the original, and also on the registered copy, only one was produced by the appellants in the lower court. That person's name is Istakeem, and though he deposed to the execution of the deed, and the purchase, as alleged, by the appellant's father having taken place, I cannot credit his testimony when I



ZILLAH BACKERGUNGE.

THE 5TH NOVEMBER 1846.

PRESENT : A. SCONCE, OFFICIATING JUDGE.

No. 80 of 10th July 1846.

*Appeal from decision of Baboo Obhoy Coomar Dutt, Moonsiff of
Burisaul, dated 11th June 1846.*

Goopal Kishen Dass, Appellant, (Defendant,)

versus

Sheikh Bhashye and Sheikh Abkar, Respondents, (Plaintiffs.)

THESE respondents as plaintiffs sued to quash a summary decree for arrears of rent, which the appellant had acquired against them for the year 1250 at the annual jumma of rupees 21-3, and the moonsiff by whom the regular suit was tried, finding the claim preferred by Gopal Kishen Dass not to be substantiated, reversed the summary decree.

For reasons corresponding with those adduced by the moonsiff, I must dismiss the appeal. Both in the lower court and in appeal, Gopal Kishen Dass has abstained from giving any account of the connexion said to have existed between himself and the respondents. He rests his claim simply upon a tahood or engagement alleged to have been entered into by the respondents; but this is not proved; and otherwise, no proof is given to shew the nature and condition of the respondents' tenancy. Ordinarily, when the amount of a ryot's rent becomes a question for litigation, the extent of the land upon which the assessment is proposed to be levied, is set forth; but in the present case, appellant justifies his appeal by asserting that ryots for reasons best known to themselves rent lands at arbitrary rates.

The moonsiff ordered the land to be measured which respondents were supposed to have occupied. The report of the measurement was filed on the 28th May; and it was expressly stated in the report, that the land so measured and which amounted to gundahs 14-2-2, had been pointed out by the parties concerned. No objection to the measurement was made by appellant to the moonsiff: and though in appeal it is asserted that one field had been omitted, I cannot entertain now this objection. Taking then the land to be gundahs 14-2-2, and applying even the rate of rent with which appellant says such land is chargeable, (though this

appears by the evidence of some witnesses to be double the actual rate,) the amount of the rent should not exceed nine rupees.

I look upon appellant's case therefore as altogether untenable, and I affirm the moonsiff's decision.

THE 5TH NOVEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 83 of 16th July 1846.

Appeal from decision of Baboo Obhoy Coomar Dutt, Moonsiff of Burisaul, dated 16th June 1846.

Hureekishen Dass, Appellant, (Plaintiff,)

versus

Goureenath Chokerbuttee and another, Respondents, (Defendants.)

GOUREENATH Chokerbuttee, respondent, professing to be proprietor of one-third of howalah Gourmunee Debia, distrained the property of Hureekishen for arrears of rent which he alleged to be due; and his title to distrain having been recognised by the collector in a summary suit raised by Hureekishen under Regulation V. of 1812, the latter instituted this action to bring the matter to a formal trial.

Goureenath admits that the howalah to which the land occupied by appellant is attached, was bought in the name of his step-mother Gourmoney Debia, but he asserts that it was the *bona fide* property of his father Brijkishore, and that, on the death of his father, he and the two sons of Gourmoney acquired each one-third.

Hureekishen Dass on the contrary declares the howalah to have been purchased by Goureemoney personally; that he received a puttah from her for his land: and that to her alone he has paid and is bound to pay his rent.

The moonsiff, relying upon what appears to me to be altogether unexceptionable evidence, found not only that Hureekishen had entered into an engagement with Goureenath to pay the rent claimed, but also that the other tenants of the same howalah paid their rents to Goureenath, in the same proportion, and he dismissed the suit.

In appeal Hureekishen re-asserts the fact of his deriving his land from Gourmoney, and denies generally the claim of Goureenath: but he leaves altogether untouched the special proofs taken in favor of the possession of the latter. I therefore dismiss the appeal.

THE 17TH NOVEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 11 of 4th March 1846.

Appeal from the decision of Mulovee Mahamed Kuleem, Principal Sudder Ameen, dated 4th July 1846.

Kuroona Moy and others, Appellants, (Plaintiffs,)

versus

The Deputy Collector of Bullooah and others, Respondents,
(Defendants.)

APPELLANTS as plaintiffs having sued to recover possession of two droons and five kanees of land, alleged by them to belong to their permanently settled estate, named talook Kanoo Ram Dass, which the deputy collector of Bullooah had seized on account of Government on the strength of a resumption decree passed on the 23rd December 1830, the principal sudder ameen held their claim to be good with respect to droons 1-10-6; but rejected their title to the remainder 3 kanees, 10 gundahs and 3 cowrees, which on measurement the disputed land was found to consist of. It is against this part of the principal sudder ameen's decree that the appeal is preferred.

Upon the resumption decree of 23rd December 1830, the deputy collector has justified his resistance to the suit. By that decree droons 55-0-12-2 were resumed, as determined by an ameen Prankishen Rae, who had been deputed to survey the land. This ameen reported the 55 droons to form one chur: and the remaining portion, 12 gundahs and 2 cowrees, to be situated in a westerly direction and across the great river Megna. The ameen drew up a sketch map, copy of which is filed with the proceedings: in this the speck of land (named chur Doannee) measuring 12 gundahs and 2 cowrees is shewn on one side, adjoining what is called chur Byragea; and opposite to this is traced the chur Dacaita Doannee, estimated to comprise 55 droons, and lying on the other side of the Megna.

The merits of this suit turn on the rights acquired by Government in the resumption of the twelve and a half gundahs. Appellants assert that the land of which the deputy collector has dispossessed them is altogether distinct from the resumption; and formed portion of their estate, and was recognized as such, at the very time the ameen's survey was made upon which the resumption rested. The deputy collector on the other hand maintains that the land in dispute is new land; not exactly the 12½ gundahs; but an accretion thrown up in lieu of that; and he points to a remark made by the ameen to the effect that a new chur was rising.

From an inspection of the ameen's map, it appeared to me that if the sketch of the country therein given could be reconciled with present appearances, the question at issue would be most easily solved. Some way south of the $12\frac{1}{2}$ gundahs proposed for resumption, lay a tract of land marked as "Hasun Alee." It was so marked by the ameen. It was not measured by the ameen. It was not proposed for resumption, and was not resumed. Appellants say that this tract "Hasun Alee" constitutes part of their estate, talook Kanoo Ram Dass, and that the respondent has taken possession of it to make up for the resumption of $12\frac{1}{2}$ gundahs which the river has carried off. Clearly then if the talook "Hasun Alee" of the map and the land in dispute should be found to be one and the same, the plea of the respondent would be quite untenable.

The map appeared to be better drawn than usual; and there were various land marks put down in it, such as water-courses, tanks, and trees, which seemed calculated to facilitate the comparison which I had in view. The proceedings of the principal sudder ameen were not clear upon this point, and I deputed an ameen to hold a special enquiry into the subject. The report of the ameen gives me no alternative but to decree the appeal. Clearly, the deputy collector has set up a claim to the old *unresumed* land "Hasun Alee." The whole resumed $12\frac{1}{2}$ gundahs has been washed away; and much besides; portion even of the tract "Hasun Alee" has gone into the river. And though it may not be said this loss strengthens the title of appellants to retain what is left to them, it shews forth more prominently the weakness of the adverse claim.

I do not find that the principal sudder ameen had any grounds for disallowing the 3 kanees, 10 gundahs, 3 cowrees, which led to this appeal. His selection of this land appears to have been altogether accidental. Indeed the deputy collector, in answering the appeal, does not attempt to defend the retention of this fraction of what was sued for, but, expressing himself dissatisfied with the judgment of the principal sudder ameen, requests me to express my opinion upon the merits of the whole case. The appeal is accordingly decreed; the whole land as measured droons 1-13-16-3, will be restored to appellants with wasilat as determined. Necessarily the costs of the suit must be charged to Government.

THE 20TH NOVEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 101 of 24th September 1845.

Appeal from the decision of Baboo Obhoya Koomar Dutt, Moonsiff of Burisaul, dated 5th September 1845.

Ram Kanhey Chatterjea and Pran Kishen, Appellants,
(Defendants,)

versus

Mohesh Chunder Chowdree and others, Respondents,
(Plaintiffs.)

PLAINTIFFS in this case sued to recover one-third of an estate named talook Juggornath Chukker, which they alleged the defendant Ram Kanhey had forcibly possessed himself of in 1238. Their great grandfather Rambudder had four sons; and by the two eldest of these sons, Jadoo Ram and Mudoo Soodun, they asserted, the estate was originally created. They were aware, they said, that Ram Kanhey founded his pretension to hold a share of the talook upon a kobalah granted by Kebul Ram descended from the fourth son of Ram Budder; but they denied altogether Kebul Ram's right to sell what, failing his ancestor's rights, could never have descended to him; and they claim to be restored to the position from which they were forcibly expelled by Ram Kanhey in Aghun 1238. It is this forcible expulsion which constitutes the nature and the date of the cause of their action.

Defendants on the other hand maintained that from the year 1232, in the month of Jeit of which year the one-third share of the talook was sold to Ram Kanhey, possession of his purchase was acquired by him; that he afterwards associated with himself his brother Pran Kishen; and further that the sons of Ram Budder had all an equal interest in the talook Juggernath Chukker, and that the family of the third son, Ram Churun Chowdree, becoming extinct, the descendants of the three other sons were entitled to one-third each.

The lower court having decided in favor of plaintiffs, an appeal is preferred to me on the general merits of the case.

The moonsiff has I think mistaken the real point at issue, and so has overlooked the obligation which the institution of this suit imposed upon plaintiffs (respondents) to make out a title for themselves, by proof corresponding with the facts averred. Plaintiffs asserted that the defendant, Ram Kanhey, usurped the right which they sued to recover in Aghun 1238; and that up to that date they in succession to their father were in the enjoyment of this right. The moonsiff seems to have looked upon the position of the respective parties at that period as secondary to the main

issue, which he took to be the hereditary title of Kebul Ram in connexion with the party in whose favor the talook was originally constituted. But it was more to the purpose to enquire what rights were the plaintiffs in possession of, at the date of Ram Kanhey's alleged aggression. Plaintiffs themselves chose to assert, and to abide by the assertion, that their rights were entire to 1238: and this I think was the foremost fact to be determined, rather than the form which the proprietary title to the talook took, fifty or forty or any indefinite number of years before. However apparently valid may be an ancestor's rights at one period, it does not by any means follow that a descendant after the lapse of forty years is exactly in the same position. Meantime much may have been alienated in various shapes; and claims, which in the beginning of the period were dormant, may have been afterwards conceded by the party who, but for the sanction of his own acts, might seem justified in resisting them.

I find then that plaintiffs, notwithstanding the opportunities they had of substantiating their assertions, both before the moonsiff and before two ameens who on successive occasions were deputed to hold a local enquiry, have failed to adduce any thing like legal proof of the circumstance of the dispossession, or of their own (or their father's) possession previous to the date assigned by them for that act. Evidence of the possession of land should consist of facts indicative of the personal knowledge of a witness. Witnesses cannot be permitted to take the place of a judge, and state their inferences respecting the points before them. In the present case it has been the object of plaintiffs to shew that for five years preceding the dispossession complained of, that is from 1232 to 1237 inclusive, the talook was farmed on behalf of Fuzl Alea; but how much rent during that time was paid, or to whom it was paid, or that the alleged farmer collected the rents of the under tenants of the talook, there is no evidence offered. And though Fuzl Alea himself was examined, excepting the bare fact that the talook had been some time or other farmed to him, he professed himself unable to give any information on the subject.

And so respecting the period immediately preceding these five years, plaintiffs have equally failed. They have filed a few Cuboolleuts given in different years by different ryots; but to prove that the possession of, and the rights vested in, the talook proceeded and were recognized in the mode assumed in the plaint of this suit, these documents are altogether insufficient.

Plaintiffs it therefore appears to me have raised no case calculated to throw suspicion upon the title of defendants, these appellants; and besides it happens that the defendants have adduced documents which, as the proceedings stand, are inconsistent with the pleas of plaintiffs. Ram Kanhey has filed the collector's receipts for the revenue of the talook paid by him from 1233 to 1237, the

very years, it is to be observed, during which plaintiffs professed that defendants had no entry. Plaintiffs say the dispossession occurred in 1238, but these receipts must be taken to corroborate the plea of defendants that Ram Kanhey's purchase of one-third of the talook took immediate effect with the sanction of those interested.

The moonsiff's decree is accordingly reversed, all costs being chargeable to respondents.

THE 26TH NOVEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 10 of 26th February 1846.

Appeal from the decision of Moluwee Mahommed Kaleem, Principal Sudder Ameen, dated 28th January 1846.

Huro Soonderee, widow of Gobind Chunder, Bishomonee, and
Bhugbuttee, Appellants, (Defendants,)

versus

Pran Narain, Respondent, (Plaintiff.)

THIS suit was instituted for the recovery of money lent, besides interest, the claim being founded on a bond for rupees 3000, bearing date 27th Magh 1250, and granted in the name of Gobind Chunder, his brother's wife Bishomonee, and his sister Bhugbuttee Choudrain: and the principal sudder ameen, considering the loan and the bond to be proved, decreed the case in favor of plaintiff, this respondent.

In appeal, as in the lower court, appellants deny the whole transaction: they deny the loan and they disavow the bond and the registry by which its authenticity is attempted to be affirmed: they assert that Bhugbuttee was at her own home, two days' journey off, at the very time she is said to have put her name to the bond in Gobind Chunder's house in Assooa; and they seek to throw discredit on the claim by shewing that only twenty-three days before the alleged date of this loan, the respondent was constrained to file a suit against Gobind Chunder and Bishomonee for the recovery of the sum of rupees 588 loaned by him to them sometime previous.

I do not know that I ever saw a case in which indirect and inferential evidence prevails so strongly over what is direct and positive. Plaintiff has adduced a cloud of witnesses. Plaintiff lives some distance from the house of Gobind Chunder: and it is said he sent the money, on the morning of the day in which the loan was made, to the latter, in charge of his gomashtah Shibchunder Soom, who was attended by a number of people. Shibchunder was in one boat, and it is said Gobind Chunder accompanied them in another. The day was spent at Gobind Chunder's house, there

the bond was written, as well as a duplicate and a mooktarnamah to carry out the registry. The three defendants are sworn to have been present, the money is sworn to have been paid, and the deed duly exchanged. And it is farther stated on the part of the plaintiff (respondent,) that Gobind Chunder had endeavoured to procure a loan of rupees 6000, undertaking to deliver over certain landed property in farm to Pran Narain, and that, pending the ascertainment of the assets of this property, Pran Narain agreed to lend rupees 3000.

Now let me turn to appellant's (defendant's) justification. I find that on the 4th Magh 1250, Pran Narain filed his plaint against Gobind Chunder and Bishomonee, for the recovery of a loan of rupees 588 besides interest. It was not till the 29th Magh that the usual notice was served on the defendants. In the plaint, Pran Narain stated that defendants had put him off from time to time, and that he had no hope of recovering his money but by a suit. Yet the same plaintiff, twenty-three days after the date of that action, professes to have granted a new loan of rupees 3000. At that time the action had only commenced: the defendants had not even received formal notice of its institution: and plaintiff, if we are to believe the facts averred by him in the present suit, incurred the risk attending the advance of a second loan without taking any security for the adjustment of the older debt. It happened that four months after the institution of the old suit, it was decreed *ex parte*, but nevertheless at the time the loan of 3000 rupees is said to have been contracted, the chances of the action had still to run, and I cannot look upon it as a natural or credible act, that plaintiff would, under the circumstances described, lend anew rupees 3000 to parties whom he himself represented as wilfully withholding an older and much smaller debt.

In the same plaint of 4th Magh 1250, plaintiff added that he had claims against the same defendants founded upon other bonds. This, I think, makes the case worse. Not a bond, but bonds are spoken of. And it is to be inferred that while these imputed debts also were unliquidated, plaintiff made a further advance to parties who had practically repudiated their obligations. Of these older debts we hear nothing more, but I am about to give judgment upon a claim preferred by the same plaintiff against Gobind Chunder for a still more recent loan than that which forms the subject of this appeal.

There is another matter which invests the present claim with much suspicion, and which I think shews that the case has been fabricated by plaintiff. The bond for rupees 3000 was registered on the 19th Phalgun, that is, 22 days after the date of the loan by Bhogwunt Ghose, who held a mooktarnama for that purpose from the alleged debtors. This Bhogwunt Ghose has been examined as a witness.

He was not present when the loan was contracted: and he knew nothing of it or of the authority given to him to act as the agent of Gobind Chunder and the others, till some eighteen days after; when, accidentally meeting Gobind Chunder in a river, at a time they were travelling in different directions, Gobind Chunder told him that he and the two females had borrowed rupees 3000, and had drawn up a mooktarnama authorizing him to register the bond. The only reason Bhogwunt Ghose assigned for his services being employed on the occasion was his acquaintance with the parties, who were people of some standing and respectability.

Respondents attempts to strengthen his claim by shewing that Gobind Chunder while the action was pending expressed his readiness to enter into a compromise, but to the circumstances such as they are represented I attach no weight; and though, with the view of accounting for appellants necessities in undertaking the loan, he files copy of a petition presented by Gobind Chunder to the civil court on the 28th Magh tendering rupees 1000, in part payment of an execution against him for rupees 1846, not to say that the rupees 1000 so paid may have been procured from many other sources than that represented by respondent, I think the extent to which Gobind Chunder was involved to other creditors is presumptive evidence against the transaction sued out in this instance.

With these views I must reverse the decree of the lower court and dismiss the suit. All costs will be charged to respondent.

THE 26TH NOVEMBER 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 8 of 21st January 1846.

Appeal against the decision of Baboo Gobind Chunder, Moonsiff of Kowkhalee, dated 23rd December 1845.

Huro Soonderee, widow of Gobind Chunder Dutt, Appellant,
(Defendant,)

versus

Pran Narain Dass, Respondent, (Plaintiff.)

THE respondent, Pran Narain, having sued to recover money lent with interest upon a bond for rupees 100, bearing date 16th Bhadoon 1251, the moonsiff, believing the case to be established, passed a decree accordingly.

Appellant (defendant) denied the transaction; he appeals therefore against the moonsiff's judgment, and he insists that certain acts of respondent himself are altogether inconsistent with the truth of the claim.

One Kuroona Moy having instituted a suit against Gobind Chunder and others, for certain land alleged to have been sold to her, Pran Narain appeared as an objector, charging the alleged purchase as fictitious and calculated to prejudice the claim he had against Gobind Chunder, his sister, and sister-in-law, for rupees 4000, more or less, due to him. In this petition which was dated 1st Assar 1251, Pran Narain spoke of the decree he had acquired against Gobind Chunder for about rupees 800; of a loan for rupees 3000 granted to Gobind Chunder and the two females; and of a further loan for rupees 100 granted to Gobind Chunder himself. Now appellant argues, and I think with great justice, that while the relation between himself and Pran Narain was such as is described in this petition, it is highly improbable Pran Narain, two months and a half after it was presented, would increase his own risks by lending more money to a man who was not only already deeply indebted to him, but by his own shewing had attempted to evade the payment of his debts by alienating his property.

Again appellant shews that while in this petition of 1st Assar 1251, Pran Narain spoke of a loan for rupees 100 granted by himself previous to that date to Gobind Chunder, he in the juwabool juwab filed by him in the suit founded on the bond for rupees 3000, which I have this day disposed of, rehearsed the loan transactions that had occurred between himself and Gobind Chunder; and therein, though he spoke of a loan of rupees 100 granted by his son to Gobind Chunder, he plainly stated that he himself had given only one loan for rupees 100—now this juwabool juwab was dated 21st Jeit 1252: and clearly, if the loan here referred to, be the same as that noticed in the petition of 1st Assar 1251, the bond of 16th Bhadoon 1251, upon which this suit proceeds, cannot be considered genuine.

I have already had to pronounce an opinion adverse to a corresponding claim preferred by Pran Narain. It is certainly remarkable that in both instances his suits should break down from acts originating with himself; but with the views I entertain, I must decree against him. The moonsiff's decision is accordingly reversed, and all costs will be charged to respondent.

ZILLAH BEHAR.

THE 13TH NOVEMBER 1846.

PRESENT: THE HONORABLE ROBERT FORBES, JUDGE.

No. 1 of 1846.

Appeal from a decision of Syud Tufuzzul Hossein, Acting Sudder Ameen of Gyah, dated the 30th March 1846.

Musst. Fazila, Appellant, (one of the Defendants,)

versus

Horil Sahoo, Respondent, (Plaintiff.)

THE respondent as plaintiff on the 16th May 1843 sued the appellant and Syud Nubboo, husband of Musst. Mukdoomun and guardian of Anayut Hossein, son, and Durgahee, daughter, and heirs of the said Musst. Mukdoomun, to recover the sum of rupees 373-3-11, principal and interest, on bond executed by the appellant and the deceased Musst. Mukdoomun, the bond bearing date the 6th Ramzan 1238 Hijeree or 23d May 1240 F. S., and, on the 19th March 1844, the suit was dismissed by the late sudder ameen, Mohamud Ibrahim Khan, who considered that the plaintiff's claim was not established. As, however, it appeared on appeal that the sudder ameen, though recording the above judgment and his disbelief of the testimony given by the witnesses of the plaintiff, had neglected to summon and take the evidence of other material witnesses, the case was on that account remanded to his court for re-trial by an order of the additional judge dated the 22d November 1844.

The heirs of Musst. Mukdoomun did not reply, and the answer of the appellant Musst. Fazila was a denial *in toto* of the execution of the bond either by herself or Musst. Mukdoomun, the latter of whom she stated always resided at Patna and never came to Behar where the bond was alleged to have been executed; and she urged that had she herself been under the necessity of borrowing money, there was no reason why Musst. Mukdoomun should have been a party to the transaction: she likewise pleaded that the bond was neither registered nor did it bear the seal of the pergunnah cazee.

On the 30th March last Syud Tufuzzul Hossein, officiating sudder ameen, recording his opinion of the fact of the execution both by Musst. Mukdoomun and the appellant of the bond being fully and satisfactorily established by the witnesses on the part of the plaintiff, while the bond also bore the seals of their respective husbands, decreed the cause in favor of the plaintiff, from which decision Musst. Fazila has alone appealed.

JUDGMENT.

Nothing whatever has been urged in appeal to justify interference with the decision of the lower court. I therefore uphold that decision, and dismiss the appeal, with costs, payable by the appellant.

THE 13TH NOVEMBER 1846.

PRESENT : THE HONORABLE ROBERT FORBES, JUDGE.

No. 125 of 1845.

*Appeal from a decision of Syud Allee Ashruff, Moonsiff of Behar,
dated the 25th June 1845.*

Meeta Mahtoon, Appellant, (Plaintiff,)

versus

Sheodyal Mahtoon, Respondent, (Defendant.)

Objector, Ruttunchund Sahoo.

THIS case and the two which follow, Nos. 126 and 127 of 1845, all relate to the same cause of action, and are accordingly brought on for hearing together.

The appellant as plaintiff and as partly malik or proprietor, and partly thikadar or lessee of mouzah Koosuhur, (included in mouzah Bishunrampoor Bind,) from the mocrurreedar or perpetual lessee Ross Beharee, sued on the 24th December 1844, to recover from the defendant, or respondent, as kashtkar or cultivator, the rent of 2 beegahs, 4 cottahs of land, under cultivation and said to be situated in the above mouzah Koosuhur, on account of the years 1250 and 1251 F. S., the other two suits which follow having been instituted on the same date by the same party as plaintiff, and with the same object against other cultivators who are the defendants in those suits.

In this case action is laid at Company's rupees 12-11-3.

In all the three suits the defendants admit their having the land specified by plaintiff to cultivate for him, but they plead differently in regard to the quantity of grain due by them respectively, their tenure being *bhowlee* or by payment in kind ; while the objector Ruttunchund Sahoo urges that the land, for rent of which he states these suits to be collusively brought between the parties, belongs to a *nigar* or sort of watercourse which irrigates land of his, and, denying that the land in question is part of the cultivated land of mouzah Koosuhur or any other *kiteh* or parcel where plaintiff represents it to be, concludes by stating that possession has been given to him in a suit under Act. IV. 1840, for reversal of which judgment his opponents in that case, Mussumuts Jeewun and Bechun, have filed a regular suit still pending.

On the 25th June 1845, the moonsiff dismissed all the three suits, adjudging the real question to be whether the land in dispute was really plaintiff's land under cultivation by the defendants, as set forth in the plaint, or occupied by the nigar or watercourse, as maintained by the objector; and he recorded his opinion that the suits had been got up between the parties with a view to establish the plaintiff's proprietary right, instead of bringing a regular suit, which procedure involved loss to Government in respect of stamp paper: to obtain the reversal of which judgment appeals have been preferred in all the three cases.

JUDGMENT.

The water-course to which the objector Ruttunchund Sahoo alludes is the same as that referred to in the original suits Nos. 15 and 94 of 1844, and in which Mussumats Jeewun and Bechun were plaintiffs and Ruttunchund Sahoo himself the defendant, and which suits were decided in this court in July last; and though the objector stated in his petition of objection that the plaintiff in this case had opposed his obtaining possession under Act IV. 1840, yet no regular suit had been brought by any one in any court to contest the former's proprietary right to the land, for the revenue of which this and the other two suits are instituted, while in the original suits above stated the claim of Ruttunchund Sahoo has been disproved.

The sale point for adjudication, therefore, is whether the respondents are *bona fide* cultivators of the land in question for the plaintiff, and if so whether they have or have not discharged the rent due from them respectively. It has above been shewn that they have all admitted having the land to cultivate from the appellant, and the record shews that, though they named witnesses in the moonsiff's court to make good their claim, they failed in depositing the peon's subsistence money with a view to cause the witnesses's attendance. In reversal, therefore, of the moonsiff's decision, I decree for the appellant in all three suits, with costs payable in each by the respective respondents.

THE 13TH NOVEMBER 1846.

PRESENT: THE HONORABLE ROBERT FORBES, JUDGE.

No. 126 of 1845.

*Appeal from a decision of Syud Ally Ashruff, Moonsiff of Behar,
dated the 25th June 1845.*

Meeta Mahtoon, Appellant, (Plaintiff,)

versus

Gerdharee Mahtoon, Respondent, (Defendant.)

Objector, Ruttunchund Sahoo.

CLAIM, Company's rupees 23-13-10, per rent of 4 beegahs, 2 cottahs of land.

JUDGMENT.

With reference to the grounds of decision recorded in the suit preceding (No. 125 of 1845,) I reverse the decision of the moonsiff, and decree for the appellant, with costs, payable by the respondent.

THE 13TH NOVEMBER 1846.

PRESENT: THE HONORABLE ROBERT FORBES, JUDGE.

No. 127 of 1845.

Appeal from a decision of Syud Allee Ashruff, Moonsiff of Behar, dated 25th June 1845.

Meeta Mahtoon, Appellant, (Plaintiff,)

versus

Hemraj Mahtoon, Respondent, (Defendant.)

Objector, Ruttunchund Sahoo.

CLAIM, Company's rupees 12-13-5, for rent of 4 beegahs, 14 cottahs of land.

JUDGMENT.

With reference to the grounds of decision recorded in the suit No. 125 of 1845, I reverse the decision of the moonsiff, and decree for the appellant, with costs, payable by the respondent.

ZILLAH BEHAR.

THE 7TH NOVEMBER 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 14 of 1846.

Appeal from Principal Sudder Ameen.

Ray Nund Lal, (Defendant,) Appellant,

versus

Shah Kuramut Hussein, (Plaintiff,) Respondent.

To reverse an order of court touching payment of interest,—the suit laid at Company's rupees 1,090-9-1.

Plaintiff states that in the execution of a decree Ray Nund Lal *versus* Kuramut Hussein and others, he, the plaintiff, deposited in court the sum of rupees 1,454-9, on the 23d of June 1838. Ray Nund Lal received the amount and applied to the court for interest on the above, which was rejected by the principal sudder ameen, but allowed in appeal by the additional judge (Mr. Quintin.) Plaintiff having deposited the sum due immediately on its demand cannot be compelled to pay interest. He sues therefore to obtain the reversal of the order passed by the additional judge. Defendant replies that by Construction No. 1129 no regular suit can be instituted for the reversal of any order, which may be passed in the execution of a decree, on account of wasilat or interest, and consequently plaintiff's action is not cognizable by the court,—plaintiff only deposited a part of the amount due on the decree, and the Sudder Court in Calcutta decided that he was answerable in common with the other defendants for the whole,—defendant could not draw the sum deposited in court as the case was under investigation.

The principal sudder ameen, Khajeh Hedaet Ulee Khan, on the 18th March 1846, decided that no interest was due for the time the plaintiff deposited the amount in the treasury, that it was defendant's own fault that he did not receive the cash. In his opinion Construction No. 1129 did not apply to the case under review. Accordingly the principal sudder ameen decreed in favor of plaintiff.

Defendant appeals on the grounds urged in his reply before the lower court.

It appears from the proceedings that the defendant, Ray Nund Lal, obtained a decree against the plaintiff and others to the extent of 5,482 rupees and petitioned for the sale of the defendant's

property to realize the same. Kuramut Hussein paid into court the sum of 1,454 rupees, 9 annas only on the 23d of June 1838, and petitioned that the property of the other defendants might be sold to realize the balance and his own released.

Several attempts were made to realize this balance from the other defendants, but owing to various objections urged by the parties themselves and by others, in which Kuramaut Hussein joined, no assets were forthcoming, and after five years' litigation Ray Nund Lal obtained an order from the Sudder Court in Calcutta on the 24th November 1840, declaring the plaintiff, Kuramut Hussein, answerable with the rest of the defendants for the balance still due. The amount was eventually made good by Kuramut Hussein, and he applied to the additional judge for deduction of interest on the sum originally deposited by him in court, which was overruled. Not satisfied with this, Kuramut Hussein commences a fresh action to endeavor to obtain a reversal of the order awarding interest.

The verdict clearly must be for the defendant, appellant, firstly, because this suit is not cognizable by the court under Construction No. 1129; secondly, if it were so, the payment of interest on the deposit was just and proper for it was owing to the plaintiff's own needless litigation that payment could not be made from the treasury.

The decree of the principal sudder ameen is reversed, and the original suit dismissed, all costs payable by the plaintiff, respondent.

THE 10TH NOVEMBER 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 11 of 1846.

Appeal from Principal Sudder Ameen.

Debeepooree, (Defendant,) Appellant,

versus

Mt. Chooney Bae, (Plaintiff,) Respondent.

To recover the amount, principal and interest, due on an advance—the suit laid at Company's rupees 1,600.

Plaintiff states that Goshyn Nursingpooree, the chela of Mohunt Shewdealpooree, took a ticca on the security of Mohunt Shewdealpooree of mouza Kusar Kuleanpoor, pergunnah Sumae, from Horil Singh, the malik and moqurureedar of the estate, at an annual jumma of rupees 3,201, for seven years, viz. for 1233 to 1239 F. In 1234 F. Goshyn Nursingpooree executed a deed of partnership in favor of the minor daughter of plaintiff, Moost. Koonja, receiving from the plaintiff the sum of 1,000 rupees in advance.

Not obtaining possession plaintiff instituted a suit in 1235 F. against Nursingpooree and Shewdealpooree the security, and obtained a decree under the deed of partnership. The advance of rupees 1,000 being still due plaintiff sues to recover it with interest from the defendants Debeepooree, the heir of Muhunt Nursingpooree, and Shewdealpooree, and from the defendants Munohurdas and Buhadoor Singh, the conditional purchaser of mouza Gungatara, the village pledged for payment on plaintiff's deed.

Debeepooree, defendant, replies, first, that the suit is not cognisable under the statute of limitations; secondly, that he is not the heir of Mohunts Nursingpooree and Shewdealpooree; thirdly, that the village of Gungatara never belonged to Nursingpooree, but the real name of the land is Kitahtara and is the property of defendant, derived by him from Munshapooree, by inheritance.

Munohurdas, defendant, sides with the above defendant, and pleads that he is conditional purchaser of Kitahtara from Debeepooree.

The principal sudder ameen, Hedaet Alee Khan, on the 16th February 1846, recorded his opinion that the plaintiff's deed of partnership covering the advance, has already been declared valid in a prior suit; that although upwards of 12 years have elapsed from the date of the deed in 1234 F., yet on account of the dispute between the parties the date for payment of the advance must be taken to commence from the year 1239 F., which brings it within the limits fixed by the regulations; that Debeepooree, the defendant, is satisfactorily proved to be the heir of Mohunts Shewdealpooree and Nursingpooree, both by the evidence of witnesses and by his own admission in the pleadings. He accordingly passed a decree awarding payment of the advance with interest to be made by defendant, Debeepooree, the heir of Mohunts Shewdealpooree and Nursingpooree, and in default the amount to be realized from the sale of mouza Gungatara named in the deed.

Defendant, Debeepooree, appeals on the grounds stated in his defence.

The only point to be considered is, whether this suit has been barred by the lapse of upwards of 12 years, for the validity of the plaintiff's deed, the receipt of the advance, and the liability of the defendant, Debeepooree, for the amount still due, admit of no dispute. The deed states that the advance received was payable at the end of the year 1239 F. Plaintiff filed her suit to recover the amount on the 14th Bhadon 1251 F., being sixteen days within the limits fixed by law for the cognizance of the claim. The decree of the principal sudder ameen is accordingly correct and is affirmed.

Appeal dismissed with costs.

THE 24TH NOVEMBER 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 129 of 1846.

Appeal from Moonsiff.

Sumoondur Pandey, (Defendant,) Appellant,

versus

Bedonun Sahoo, (Plaintiff,) Respondent.

To recover the amount, principal and interest, due on a bond,—the suit laid at Company's rupees 34-5-3.

Plaintiff states that the defendant, Sumoondur Pandey, together with Durshun Pandey, Oodit Pandey, Bhurosee Pandey, Ramchurn Pandey, and Sujun Pandey, borrowed on bond the sum of rupees 148-3-6, on the 7th Bhadoon 1249, stipulating to repay the amount with interest in Asarh 1250. Durshun Pandey and others, with the exception of Sumoondur Pandey, repaid their shares of the debt. Sumoondur Pandey refusing to liquidate his balance, plaintiff sues to recover it. The defendant denies that he executed the bond or borrowed any money from plaintiff. The moonsiff of Juhanabad, Tufuzzool Hosein, on the 23d June 1846, decided that the claim of the plaintiff was satisfactorily proved by the production of the bond and the evidence of respectable witnesses, he accordingly decreed in favor of the plaintiff. Defendant appeals, but urges nothing in addition to his former reply worthy of consideration.

The decision of the moonsiff is quite satisfactory and must be upheld.

The appeal is dismissed with costs.

THE 25TH NOVEMBER 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 134 of 1846.

Appeal from Moonsiff.

Jeetoo Pandey, (Defendant,) Appellant,

versus

Gunput Singh, (Plaintiff,) Respondent.

To recover the rent of a house,—the suit laid at Company's rupees 115.

Plaintiff states that the defendant, on the 14th Bhadon 1251 agreed to rent his (plaintiff's) house as a residence for pilgrims, for a period of fifteen days. The rent to be 115 rupees. Defendant received possession of the key of the dwelling, but, not paying the stipulated rent, plaintiff sues to recover it.

The defendant denies having rented the house as stated by plaintiff. Had he done so the written agreement (surkhut) would be forthcoming. There is no house in the whole town of Gya that rents at such an exorbitant rate. The suit is brought forward from enmity, plaintiff's relative having preferred a charge in the criminal court against defendant's brother, which was dismissed by the magistrate.

The additional moonsiff of Gya, Kasim Ulee, on the 18th of June 1846, considering the evidence produced sufficient to establish plaintiff's claim, although no written agreement had been drawn out, decreed in favor of the plaintiff.

Defendant appeals on the grounds stated in his reply before the lower court.

The plaintiff, respondent, can produce no written agreement (surkhut) to substantiate his claim, nor does it appear that the defendant ever held possession of the house. All that can be gathered from the evidence is, that the defendant at one time seemed inclined to rent the house and afterwards altered his mind. The real cause of this suit being instituted is involved in obscurity. To give validity to any agreement for rent I consider the execution of the surkhut to be indispensable, without it no action for rent can be admitted in the court. On these grounds, the moonsiff's decision is reversed.

The appeal is decreed and the original suit dismissed. Parties to pay their own costs.

THE 28TH NOVEMBER 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 6 of 1846.

Appeal from Principal Sudder Ameen.

Shewarue, (Plaintiff,) Appellant,

versus

Jobraj Singh, Munbodh Singh, Mohun Singh, Akbal Ulee,
purchaser of a third share, and Government, (Defendants.)
Respondents.

FOR possession of 8 annas share in mouza Bazeedeh, with wasilat from 1240 to 1250 Fusly, and to reverse the sale by the collector of the third share of the above eight annas share. The suit laid at Company's rupees 1,294.

Musst. Hem Kooner, +
wife.

Deelchund Rae,
died in 1206 F.

Balgobind,
died in 1207 F.

Daughter.

Shewa Rae,
Plaintiff.

Plaintiff states that his grandfather, Deelchund Rae, purchased from Government, at a public sale in A. D. 1798, the entire village of Bazeedeh, and kept possession till his death. In the year 1206 he died, leaving a son, Balgobind, and a widow, Moost. Hem Kooner. Balgobind died in 1207 Fusly. Moost. Hem. Kooner was in possession of the estate till the year 1219 Fusly, when she made the whole of it over by deed of gift, which was duly registered, to her grandson, Shewa Rae, the present plaintiff. In the year A. D. 1826, when plaintiff applied to the collector to have his name entered in the registry as proprietor of the estate, the defendants, Munbodh Singh and others, presented a petition setting forth that Moost. Hem Kooner had admitted Munear Singh to a half share of the property, and that Futuh Singh, son of Munear Singh, had sold it to them, consequently they were entitled to be registered as eight annas sharer. This plea was overruled, and plaintiff's name duly inserted in the register, after sundry delays in the year A. D. 1832. In the year 1240 Fusly, plaintiff was dispossessed by defendants of the above share, and now sues to recover with wasilat. Plaintiff filed a supplementary plaint to include the Government and Akbal Ulee as defendants, a third share in the eight annas share having been sold by the collector to realize a balance due from Mohun Singh, defendant, as security of Bishoonath Singh, the moostajir of mouza Korah, a khas mehal, which share was purchased by Akbal Ulee.

The defendants, Munbodh Singh and Jobraj Singh, reply, that the suit is not cognizable under the regulations, more than twelve years having elapsed since they held possession. Moost. Hem Kooner having admitted Munear Singh to a half share in the estate, receiving the value in cash in 1207 F., this share Futuh Singh, son

of Munear Singh, sold to defendants Munbodh Singh, Jobraj Singh, and Mohun Singh, their relative, in the year 1225 F., since which period possession has remained with defendants. The collector would not admit of defendants' name being inserted in the registry, because the deed of sale stated that two of the sellers, Phool Singh and Sham Singh, brother of Futuh Singh, were minors.

Government plead that Mohun Singh, defendant, pledged his third share to the collector as security for Bishoonath Singh, the moostajir of mouza Korah. Prior to the sale for the recovery of balances due notice was given, yet plaintiff preferred no claim, which he would have done had he any right to the land in dispute.

Akbal Ulee, defendant, states, that he purchased the third share of Mohun Singh, at public sale in 1251 F., and under any circumstances cannot be answerable for wasilat prior to that date. He sides with the rest of the defendants.

Mohun Singh, defendant, filed no reply. Duriao Singh and others preferred a claim to a 2 annas, 13 dams share of the land forming part of Jobraj Singh and others' share, they having become purchasers to that extent at the sale under the decree of court in the suit Munbodh Singh *versus* Jobraj and others.

The principal sudder ameen, Hedaet Ulee Khan, on the 19th January 1846 decided that the partnership of the defendant in the estate from 1225 Fusly was proved, making a period of more than 12 years from the institution of the suit; that the deed of gift does not specify the entire village being given to plaintiff; that in a suit for debt against the present plaintiff in the moonsiff's court brought by one Dewar Singh, the plaintiff designated himself in the bond as malik of half the village of Bazeedeh, clearly shewing that he is not entitled to the whole estate. On these grounds he dismissed the suit.

Plaintiff appeals, amongst other matters urging, that the principal sudder ameen never called for the deed of partnership; had any existed it would have been made over to the defendants, Munbodh and Jobraj, when they purchased the supposed share from Futuh Singh; plaintiff's possession till 1833 A. D. is proved by the foudaree roobukaree of the 16th April 1833. He received no notice of Mohun Singh's security, and consequently could not object to it. The bond debt case in which plaintiff is designated as half sharer, was a trick on the part of Munbodh Singh and others. Plaintiff never admitted the claim.

In my opinion the defendants have not a shadow of title to the land under investigation. Moost. Hem Kooner, the widow, succeeding to the estate on the death of her husband, Deelchund Rae, the original proprietor, and of her son, Balgobind, had no right (supposing her to have done so) to alienate any portion of the property without the consent of the heirs. She however made over the

whole of the estate during her life time by deed of gift duly registered to her grandson and legal heir, Shewa Rae, the plaintiff in this suit. His name appears as sole proprietor in the collector's registry, and so far from having been out of possession for upwards of twelve years, as stated by the principal sudder ameen, the documents filed shew that the parties were constantly at war with each other in the foudaree court touching possession of this eight annas share, and the last record found of the dispute was in the year A. D. 1833, when the parties were referred by the criminal court to the civil court to settle their claims. The deed of partnership, if it ever existed, has not been produced—a document essential for establishing the defendants' right. The sale made by Futuh Singh to Munbodh Singh, Jobraj Singh, and Mohun Singh, is clearly invalid, he having no power to sell property of which he was not the legal owner.

The suit before the moonsiff brought by one Dureeao Singh against Shewa Rai for debt under a bond, in which it is made to appear that Shewa Rai calls himself half owner of mouzah Bazeedeh, is, I consider, of no weight, for the plaintiff denies the claim *in toto*, and such a designation is at variance with the claim which the plaintiff has invariably asserted that he is the sole owner of the estate. Fabrication of bonds when parties are at variance, are of constant occurrence in these districts.

The collector had no right to sell the third share given as security by Mohun Singh, for the land it appears was not Mohun Singh's to pledge, but is the property of the plaintiff, the legal heir of the original proprietor, Deelchund Rae. The decision of the principal sudder ameen is reversed, and a decree given in favor of plaintiff for the eight annas share in mouza Bazeedeh claimed by him, with wasilat at the rate of 61 rupees per annum, with interest from the years 1240 to 1250 F., inclusive, payable by the defendants, Munbodh Singh, Jobraj Singh, and Mohun Singh, from the year 1251 F. One-third of the wasilat at the above rate to be paid by Akbal Alee, the purchaser of Mohun Singh's share, the remaining two-thirds payable by the defendants, Jobraj Singh and Munbodh Singh. Costs of suit payable by the three defendants, Jobraj Singh, Munbodh Singh, and Mohun Singh.

ZILLAH BEERBHOOM.

THE 3RD NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 105 of 1846.

Regular Appeal from a decision of the Moonsiff of Kundera, Mirza Ushkuree Fikrut, dated 3rd March 1846.

Neelkanth Bhuttacharj, (Defendant,) Appellant,

versus

Sreenath Hajura, (Plaintiff,) Respondent.

THIS suit was instituted, on the 10th June 1845, to recover the sum of rupees 15-9-6, the value of grain forcibly taken.

The plaintiff states that he was in possession of mouzah Rugonathpoor, under a farming lease granted by the proprietors Mungla Dibya and others; that in the month of Poos 1251, he distrained the crops of the defendant Sham Ghose, a ryot of that mouzah, for an arrear of rent, and placed the produce, consisting of 1 *kahun* 8 *puns* of paddy, in charge of Radhakisto Mundul and Bageerut Chokeedar, defendants, and he was about to apply for its sale, under Regulation V. 1812, when the ryot came forward and acknowledging the arrears, amounting with interest to rupees 14-2, executed a deed bearing date the 11th Poos 1251, whereby he made over to plaintiff the whole of the distrained paddy at its estimated quantity of 98 *sulees* 6 *cottahs*, exclusive of the straw, in payment of the debt; that plaintiff was about to thresh out the paddy, when the defendant Neelkanth Bhuttacharj and others carried it off by force under date the 17th Poos 1251, and that plaintiff therefore sued for its value, rupees 15-2 *plus* 7 annas 6 pies as *dhrat*, at the rate of half an anna the rupee.

The defendant Neelkanth Bhuttacharj in answer denied the claim. He stated that Sham Ghose having owed him 30 *sulees* of paddy directed his mother, on the 18th Poos 1251, to pay him the amount, and she accordingly threshed and weighed out to him (defendant) on that date, by the hands of Prusottim Kyal, in the presence of Bageerut Chokeedar and others (all of whom have been made defendants) 26 *sulees* 15 *seers* of paddy, which was conveyed to his (defendant's) house; that the plaintiff, who had always borne enmity towards him, forwarded a written information on the following day to the police darogah of Keogong, charging him with having stolen the paddy from Sham Ghose, but the magistrate on the circumstance being reported to him dismissed the charge; that the plaintiff upon this instituted a suit, No. 13

of 1845, against him (defendant) which was struck off on default to recover the value of the paddy, and in reply to the answer denied having filed the said information at the thana ; but defendant holds copies of the information, the darogah's report, and the magistrate's order to prove that plaintiff did inform against him, and the fact of his having done so was evidence that the alleged attachment and purchase of the paddy were false ; that it was contrary to the custom of the country to purchase grain at its estimated quantity as stated in the plaint ; and that plaintiff does not explain what he means by *dhrat*, and under what regulation or custom he demands it.

The defendants Sham Ghose, Radhakisto Mundul, and Bageerut Chokeedar, filed an answer in support of the plaint.

The moonsiff recorded in his decision that the plaintiff's claim was proved by the evidence of witnesses against the defendant Neelkanth Bhuttacharj ; that the plea advanced by the latter that he (Neelkanth Bhuttacharj) had received the paddy in payment of a debt was a mere ruse, for the copy of the written information forwarded by plaintiff to the police darogah shows that it related to other paddy, which was carried off on the 18th Poos, whereas this suit is for paddy, which defendant took away on the 17th Poos ; the two transactions he held to be distinct, and he therefore decreed the principal sum of rupees 15-2 against the defendant Neelkanth Bhuttacharj, with costs of suit.

The plaintiff (respondent,) in answer to the reasons for appeal, acknowledges that he forwarded the written information to the thana reporting the theft of paddy on the 18th Poos, and maintains, in conformity with the notion entertained by the moonsiff, that the grain was carried off by appellant on the 17th Poos as well ; but such notion is opposed not only to probability but to the written information alluded to, and also to the reply filed by plaintiff in the suit mentioned in the answer as having been struck off on default. In the written information, which professes to have been drawn up at the instance of Sham Ghose, plaintiff represented that Neelkanth Bhuttacharj stole, on the 18th Poos, two stacks of paddy belonging to Sham Ghose, which he (plaintiff) had distrained for rent, without any mention of his having, on the preceding date, carried off the paddy stated in the plaint as having been purchased of Sham Ghose ; and in the reply referred to, no allusion is made to a double transaction ; on the contrary, in respect to the discrepancy in the dates, plaintiff explained that he gave the date, the 17th Poos, on the statement of Sham Ghose and others, from whom he first heard of the circumstance ; and yet in this suit witnesses are brought forward to swear that the grain was carried off on both dates ! The allegation that he had issued an attachment of distraint against the paddy, plaintiff has

not attempted to prove. I consider the claim a fraudulent one, and I therefore reverse the moonsiff's decision, and decree the appeal to appellants, with costs in both courts.

THE 5TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 112 of 1846.

*Regular Appeal from a decision of the Moonsiff of Gopalpore,
Gopenath Das, dated the 10th April 1846.*

Muheshur Chukerbuttee, (Plaintiff,) Appellant,

versus

Sonatun Bunik, Besheshur Chukerbuttee, Baboo Khan, and
Zeemeendar Khan, (Defendants,) Respondents.

THIS suit was instituted, on the 6th June 1845, on a value of rupees 5-10-7, to recover arrears of rent.

Plaintiff states that by a decision of the judge of this district passed in the case of appeal No. 114 of 1840, he was awarded possession of a seven annas share of a tank in mouzali Mankar named Hajara, in virtue of a deed of mortgage and conditional sale executed by the defendant Baboo Khan, and he obtained possession in execution of the decree on the 15th Asin 1249 B. S.; that the defendant Sonatun Bunik held, under a lease granted by Baboo Khan, three cottahs of *bast* land situated on the north embankment of the tank, the rent of which he refused to pay; and plaintiff therefore sues for the arrears of rent due from the 26th Magh 1248 B. S., the date of the decree, to the 25th Jeith 1252, being three years and four months, at the rate of 20 Sicca rupees per beegah, principal and interest up to the latter date on plaintiff's share, being Sicca rupees 5-5, or Company's rupees 5-10-7, and he makes the nine annas shareholders, Besheshur Chukerbuttee and others, parties to the suit.

The defendant Besheshur Chukerbuttee in answer pleaded that plaintiff was not entitled under the decree quoted by him to the embankments of the tank, which are in defendant's possession; that plaintiff, in his reply filed in the original suit No. 17 of 1840, from the decision passed in which the case of appeal No. 114 of 1841 was preferred, expressly stated that the embankments had not been purchased by him, and the decree of the judge was passed in accordance with that reply. •

The moonsiff dismissed the suit on the ground that plaintiff had no right under the decree quoted to the land occupied by the defendant Sonatun Bunik, and consequently that the claim to rent thereof was inadmissible.

It is irregular in a suit for rent to define the rights of the parties to the property for which rent is claimed. The only point that can be entertained in this suit is whether plaintiff obtained possession of the disputed holding under the decree whence he derives his claim. From the record of the suit and the proceedings held in execution of the decree, that does not appear to be the case; and as a suit for the rent of property not in the possession of the party claiming it is untenable, I reverse the order of the lower court and nonsuit the plaintiff, referring him for adjustment of the matter in dispute to the usual procedure of summary petition to the court in which execution of the decree was taken out. All costs will be made chargeable to appellant.

THE 6TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 113 of 1846.

*Regular Appeal from a decision of the Moonsiff of Doobrajpoor,
Moulvi Atta Alee, dated 9th April 1846.*

Rajeedhur Bhundaree and Biprochurn Bhundaree, (Defendants,)
Appellants,

versus

Koochil Rukyut, and after his death, Gour Munee Dasya, his wife,
(Plaintiff,) Respondent.

THIS suit was instituted by Koochil Rukyut, on the 21st April 1845, to recover possession of land and the value of crops.

The plaint set forth that plaintiff held in mouzah Kanturee, purgunnah Jynojul, bigahs 7-3-5 of land at a jumma of rupees 8-4-5, which he paid to the 11 annas and 5 annas proprietors respectively, up to the close of 1250 B. S. in full; that in 1251 he paid to defendants, Rajeedhur Bhundaree, Biprochurn Bhundaree, and Brij Lal Bhundaree, the gomashtahs on the part of the 11 annas putnee talookdar Kisto Chunder Rae, the sum of 6 rupees, and to the defendants, Helaram Ghosal, Neerun Ghosal, and Shaikh Sudder, the farmers on the part of the 5 annas zemeendar Biprochurn Chukurbuttee, the sum of 2-12, being the amount of rent in full for that year also; that nevertheless, on the 2d Agrahun 1251, the gomashtahs and farmers prevented him from cutting his crops and ousted him from the land, and, on remonstrating with them, he was told that there was an old arrear due from him, and that he should not be allowed to cut the crops until that had been satisfied; that he in consequence instituted a suit, No. 527 of 1844, to recover possession and the value of the crops, which suit was nonsuited for informality, and he now renewed the claim,

estimating the value of the land at rupees 30, and the crops at rupees 33-8-3, total value rupees 63-8-3.

The defendant, Kisto Chunder Raee, and his gomashtahs, Rajeedhur Bhundaree and others, in answer denied that they had prevented the plaintiff from cutting his crops or had dispossessed him of his lands. They pleaded that in the answer filed by them in suit No. 527 they represented that the crops were still standing, that they had not forbid plaintiff to cut them, and that he was at liberty to do so whenever he chose, but plaintiff notwithstanding took no measures to secure the crops, and had allowed the land to lie fallow in 1252, with the intent to call upon them for damages on account of that year also ; that the value of the crops has been over-estimated ; and that plaintiff was in arrears on account of former years, and therefore they would have been justified if they had prevented him from cutting the crops pending an adjustment of accounts.

The defendants, Helaram Ghosal and Sudder Mundul, filed an answer to the same effect, save that they allege that plaintiff did bring the land into cultivation in 1252, and they instanced that fact as proof that he was not dispossessed in the preceding year.

The moonsiff, considering the allegations set forth in the plaint satisfactorily proved by the evidence of the witnesses adduced in support of them, decreed the suit in favor of plaintiff, by awarding possession of the land and damages on account of loss of crops to the amount of rupees 30-1-11, as established by the evidence against the defendants, Rajeedhur Bhundaree, Biprochurn Bhundaree, Brij Lal Bhundaree, and Helaram Ghosal. •

The defendants, Rajeedhur Bhundaree and Biprochurn Bhundaree, appeal from this decision on the main ground of *laches* on the part of the plaintiff in not having secured the crops when he was warned to do so in the answer filed by them in the former suit. This ground is untenable, in my opinion, for plaintiff having thrown himself on the protection of the court, it could not be expected of him to interfere in the matter ; and nothing else appearing to raise a doubt of the correctness of the moonsiff's decision, I confirm the same, and dismiss the appeal, with costs payable by the appellants.

THE 9TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 114 of 1846.

Regular Appeal from a decision of the Moonsiff of Dhekkabaree, Neel Madhub Mookerjee, dated 21st April 1846.

Balug Ram Raee, (Plaintiff,) Appellant,

versus

Gooroo Churn Gope, (Defendant,) Respondent.

THIS suit was instituted, on the 9th September 1845, to recover the sum of rupees 30-8-1, principal and interest, due on a bond alleged to have been executed by defendant in favor of plaintiff, on the 12th Magh 1247 B. S., for 25 rupees, being 21 rupees on account of a previous debt and 4 rupees in cash.

The defendant in answer denied that he had ever borrowed money of plaintiff or executed a bond in his favor. He pleaded that he had himself a claim against plaintiff, which he was about to sue for, regarding a share of the crops of some land, which he had cultivated for him under the tenure denominated *bagjote*, and that plaintiff had anticipated him by bringing this false suit.

The moonsiff dismissed the claim as not proved, on the grounds that the evidence of the four witnesses produced in support of the bond was contradictory; that one of them denied all knowledge of the bond and the other three were plaintiff's relations and dependants; that the document exhibited suspicious marks of erasure on the back; that plaintiff, on being called upon to produce his account book in corroboration of his claim, declared he kept no accounts, notwithstanding his own witnesses deposed that an account book was produced in order to adjust the old debt at the time the bond was written; and lastly, that the evidence of the witnesses examined on the part of the defendant proved that the plaintiff bore enmity towards him.

The marks of erasure noticed by the moonsiff are accounted for by the fact that the deed was commenced to be engrossed on the reverse of the stamp and the writing erased on the discovery of the mistake; but I do not see how the other reasons mentioned by the moonsiff are to be got over; the discrepancy regarding the account book, in particular, shows that no dependence can be placed on the evidence of the plaintiff's witnesses; and I therefore uphold the decision of the lower court, and dismiss the appeal, with costs.

THE 9TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 120 of 1846.

Regular Appeal from a decision of the Moonsiff of Ookhra, Gobind Chunder Chowdhry, dated 16th April 1846.

Sishteedhur Hajura, (Defendant,) Appellant,

versus

Sebukram Mundul and Dwarkanath Mundul, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 15th September 1845, to recover the value of ornaments.

The plaint set forth that Degumburee Dasya, a minor, the daughter-in-law of plaintiff Sebukram Mundul, and wife of plaintiff Dwarkanath Mundul, in the month of Asar 1250 B. S., went to the village of Dignala to make an offering at the shrine of Chundee Takorancee, and after the ceremony was over the defendant Oojula Dasya invited the child to her house, and there took from her person a silver collar and a pair of silver bracelets, weighing altogether 21 tolahs; that on hearing of the circumstance from Degumburee, plaintiffs proceeded to Dignala and demanded back the ornaments, when Oojula said the child had dropped them, but Sishteedhur Hajura, her son-in-law, promised in the presence of respectable people to make good their value in the month of Chytc 1250, and subsequently repeated his promise on the matter being referred by the talookdar of the village to a punchaet; that he has failed to keep his promise, and therefore plaintiffs sue to recover the value of the ornaments, viz. 16 rupees.

The defendant, Sishteedhur Hajura, in answer denied that either he or his mother-in-law had taken the ornaments or had promised to restore their value: he stated that the facts of the case were that Degumburee accompanied by her mother and aunt went to the shrine at Dignala, and, being overtaken by night came of their own accord to defendant's house, where they were treated with hospitality and they retired to rest; in the morning they complained of having lost Degumburee's ornaments, and an inquiry was set on foot by the village police, but no trace of them was found, and it was not even proved that Degumburee had on any ornaments when she came to Dignala.

The moonsiff decreed the suit against Sishteedhur Hajura, considering his liability to the claim established by the evidence adduced.

It does not appear from the moonsiff's decision what are the precise grounds on which the appellant is made liable. The evi-

dence of the witnesses does not prove that the ornaments were taken from the child by Oojula Dasya, or that the appellant promised to make good their value as asserted; and the punchaet which was convened by the talookdar seem to have come to no decision on the matter. I know of no law by which a host can be held responsible for his guest's losses, even if the loss did take place in appellant's house, and I therefore reverse the moonsiff's decision and decree the appeal, with costs in both courts chargeable to respondents.

THE 10TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 125 of 1846.

*Regular Appeal from a decision of the Moonsiff of Amdahra,
Gholan Buttool, dated the 27th April 1846.*

Anund Moi Dasya, heir of Ramkulyan Nundee deceased, (Plaintiff),
Appellant,

versus

Tripoorra Koolani and Rajaram Gorain, (Defendants,) Respondents.

THIS suit was instituted, on the 3d April 1845, by Ramkulyan Nundee, deceased, to recover the sum of Company's rupces 105-9-8, principal and interest, due on a bond alleged to have been executed in his favor, on the 27th Agrahun 1243 B. S., by Sreedhur Gorain, deceased, the husband of defendant Tripoorra Koolani, and father of defendant Rajaram Gorain.

The defendant, Tripoorra Koolani, in answer denied the claim, and stated that plaintiff had instituted a separate suit, No. 97 of 1845, against her, to recover the sum due on a bond of the same amount and date as the present, which he alleged was executed by her husband in favor of his (plaintiff's) father, but, having recollected that his father died before the date in question, plaintiff filed a *razeenamah* in that suit, falsely asserting that the claim had been adjusted, and he has instituted this suit in its stead.

In reply the plaintiff affirmed that he and his father carried on business separately, and that two separate bonds were executed by Sreedhur Gorain on the same date.

The moonsiff dismissed the claim on the ground of the contradictory evidence of the witnesses who are alleged to have subscribed to the bond, of which evidence he gave an analysis in his proceeding; and nothing having been shewn in appeal to impugn the correctness of his judgment, I confirm the same, and dismiss the appeal, with costs.

THE 11TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 132 of 1846.

*Regular Appeal from a decision of the Moonsiff of Doobrajpoor,
Molvi Atta Alee, dated 9th May 1846.*

Neelkumul Mookurjee, (Plaintiff,) Appellant,

versus

Ramachurn Chukurbuttee, (Defendant,) Respondent.

THIS suit was instituted, on the 25th July 1845, to recover a right of way.

The substance of the plaint is as follows :—The hereditary homestead of plaintiff's family was divided in the time of his grandfather Sreedhur Chukurbuttee, into six shares, (corresponding with the number of male members,) which were apportioned off to the right and left of the main-door way, which faces the west, a passage being left down the middle communicating with the several divisions. Sreedhur's division, to which plaintiff has succeeded, was situated on the east end of the homestead, and the passage indicated was open to it up to the year 1248 B. S., when the defendant Neelkumul Mookurjee, who has succeeded to the possession of two divisions on the right hand side and one division on the left, the latter by purchase, closed the passage by running a wall across. Plaintiff had in consequence made a new entrance to his division through a plot of rent-paying land lying adjacent, but finding this inconvenient he sues to recover the original right of way, which he values at 12 rupees.

The defendant (appellant,) Neelkumul Mookurjee, in answer pleaded that the three divisions, to the possession of which he is said to have succeeded, were not his own, but his wife's; that his wife raised the wall referred to years ago; and that she should have been sued and not himself.

Tripoorra Soonduree Dibya, the wife of the appellant, appeared as claimant, stating in her petition, that she had succeeded to two of the divisions of the homestead as heir to her father; that the division on the north side was purchased by her father in her name in 1237, since which period the passage claimed has never been open, and the claim was therefore barred by lapse of time; that the suit was undervalued; that her husband was a koolin brahmin, at liberty to marry into another family, and might therefore neglect her interests, and she consequently prayed that the suit might be tried in her presence.

The moonsiff decreed the suit in favor of the plaintiff, against the defendant (appellant,) without having called upon the claimant for proofs in support of her allegations, or passing any order on

her petition : this is irregular : the moonsiff, on the principle of the rule laid down in Clause 4, Section 6, Regulation V. 1831, should have regarded the claimant as a party to the suit, and as he did not do so, I reverse his decision, and send back the case for re-trial, with directions to proceed as above indicated.

THE 11TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 133 of 1846.

*Regular Appeal from a decision of the Moonsiff of Kytha,
Munowur Ali, dated 19th May 1846.*

Manik Chund Sirkar, (Defendant,) Appellant,

versus

Kumul Lochun Sirkar and Jymunce Dibya, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 31st May 1845, to recover the sum of rupees 25-7-9, on account of exactions of rent.

Proofs were called for from the plaintiffs on the 4th August 1845; they were filed and admitted on the 12th December 1845, after a lapse of upwards of four months, and the suit was decided on its merits on the 19th May 1846.

It is objected to in appeal that the plaintiffs having neglected to proceed more than six weeks, the moonsiff ought under Act XXIX. 1841, to have struck the case off his file.

The moonsiff, having been called upon to state why he did not conform to the provisions of that Act, explains that he was influenced by representations of the plaintiffs' poverty. This explanation is deemed unsatisfactory; and the plaintiffs (respondents) having failed to shew cause why the suit should not be dismissed for the default incurred, I reverse the moonsiff's decision under the provisions of Act XXIX. 1841, with costs in favor of appellant.

THE 12TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 137 of 1846.

*Regular Appeal from a decision of the Moonsiff of Dhekkabaree,
Neel Madhub Mookerjea, dated 22nd May 1846.*

Paunch Kouree Chokeedar, (Defendant,) Appellant,

versus

Prem Dai Chokeedar, (Plaintiff,) Respondent.

THIS suit was instituted, on the 28th June 1845, to recover possession of 1 beegah 3 cottahs of *chakoran* or service land.

Both the plaintiff and defendant are chokeedars of mouzah Rughonathpore, holding service land in lieu of stipend. The plaintiff was appointed chokeedar in 1248 B. S., in succession to Uddeet chokeedar deceased, and claims the disputed land on the ground that it belonged to Uddeet, in whose name it was recorded in the zameendar's measurement papers.

The defendant in answer objected to the plaintiff's having come into the civil court instead of laying his complaint before the magistrate, both of them being police servants. He denied that the land belonged to Uddeet and consequently the plaintiff's title to it, stating that many years ago, he could not remember the date, a dispute regarding the service land arose between him and Uddeet, and the matter being referred to the magistrate, he (defendant) was put in possession of the disputed land after enquiry, and he has retained possession ever since; and that plaintiff having attempted to oust him in 1251 B. S., he was maintained in possession by the police darogah by order of the magistrate.

The moonsiff decreed in favor of plaintiff on the grounds that it was proved by the evidence of plaintiff's witnesses that the disputed land was formerly in possession of his predecessor Uddeet chokeedar; and that the witnesses produced by defendant did not establish his pleas.

On consulting the records of the magistrate's office I find that in 1833, 1 beegah 3 cottahs of service land were taken from Uddeet chokeedar and given to Paunch Kouree chokeedar (appellant,) by order of the magistrate, to make their respective holdings equal. This is the land now disputed: and as there appears to me no ground for the interference of the civil court in any such equitable arrangement that the magistrate may make regarding the service land of the chokeedars, I reverse the moonsiff's decision, and decree the appeal to appellant with costs in both courts.

THE 12TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 139 of 1846.

Regular Appeal from a decision of the Moonsiff of Kundera, Mirzu Ushkuree Fikrut, dated 23d May 1846.

Manik Chund Sirkar, (Plaintiff,) Appellant,

versus

Kalee Churn Mundul, (Defendant,) Respondent.

THIS suit was instituted, on the 10th February 1846, to recover the sum of rupees 31-6-5, principal and interest, due on a bond

alleged to have been executed by the defendant in favor of plaintiff (appellant) on the 8th Bysakh 1244 B. S.

The defendant did not appear in the lower court, the moonsiff, therefore, after satisfying himself by the evidence of witnesses that the process of the court had been duly served on the defendant, proceeded to try the suit *ex parte*, and on the grounds that the names of the two witnesses, who deposed to having subscribed to the bond, appeared to have been recently added to the document, and that the writing in the text had a fresher appearance than the date of the document warranted, he dismissed the suit with costs.

The defendant (respondent) has not appeared in this court either, and as the reasons given by the moonsiff for his decision are not borne out, in my opinion, by the appearance of the bond, and the two witnesses swear positively that it was executed by the defendant and the money paid and received in their presence, I reverse the decision appealed from, and decree the amount of claim to appellant against the respondent, Kalee Churn Mundul, with costs in both courts.

THE 16TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 143 of 1846.

Regular Appeal from a decision passed by the Principal Sudder Ameen, Moulvi Nujumul Hug, on the 30th May 1846.

Mudhoosoodun Koondoo, (Defendant,) Appellant,

versus

Radhagobind Singh, (Plaintiff,) Respondent.

THIS suit was instituted, on the 21st September 1844, to recover the sum of Company's rupees 2,781-10-5, on account of money embezzled by a tehseeldar.

The plaintiff, an inhabitant of Busooa, in zillah Hooghly, states that on the 19th Poos 1241 B. S., he appointed the defendant, Mudhoosoodun Ghose, tehseeldar, to collect the outstanding balances of talook Amduhra, &c. in zillah Beerbhoom, on the security of the defendant (appellant) Mudhoosoodun Koondoo, and a stamp not being at hand the defendants at first executed the usual agreement and security bond on plain paper, but they subsequently, under date the 27th Agrahun 1242, re-executed the deed on a stamp in due form; that the defendant Ghose was employed in collecting the outstanding balances from Poos 1241 to the close of 1243, when he attended plaintiff's sudder cutcherry at Soory with his accounts, which showed that he had collected the gross sum of Sicca rupees 7,225-5, and after deducting remittances, Sicca rupees 4,914, and expences of collection, Sicca

rupees 882, there remained in his hands the sum of Sicca rupees 1,429-5, for which he signed an account balance (nikasee hisab) bearing date the 19th Bysakh 1244, conditioning to make good the amount of defalcation in the month of Asar following, and in failure thereof to pay interest till the debt be liquidated; that up to this date nothing has been paid, payment having been put off on demand by promises; and plaintiff therefore sues to recover the amount of defalcation Sicca rupees 1,429-5 *plus* interest Sicca rupees 1,178-4=Sicca rupees 2,607-9, or Company's rupees 2,781-10-5.

The defendant (appellant) Mudhoosoodun Koondoo in answer denied the claim *in toto*. He pleaded that the suit was false and collusive; that he knew not Mudhoosoodun Ghose, never spoke to him in his life, and never stood his security; that he (Koondoo) had instituted a suit No. 191 of 1844 in the Hooghly court against plaintiff and obtained a decree from the additional principal sudder ameen for rupees 3,757-13, to shirk off the payment of which plaintiff has instituted this counter claim, making his servant, Mudhoosoodun Ghose, a defendant, in order to get him to file a kubool juwab; that plaintiff in his answer to the suit No. 191, advanced several specious pleas, but made no mention of this claim, which he would have done had it been true.

The plaintiff in reply stated that the defendant, Mudhoosoodun Ghose, was the son of his former naib, and was appointed tehseeldar at the recommendation of Koondoo, with whom he was on terms of intimacy; that the non-mention of the present claim in the answer to the suit No. 191 was no detriment to it, for his mookhtar at Hooghly could not be expected to be acquainted with circumstances which took place in Beerbhoom.

On the 8th July 1845 the defendant, Mudhoosoodun Ghose, filed an answer in support of the plaint. He acknowledged that he was appointed tehseeldar on the security of the defendant, Koondoo, and stated that in the month of Bysakh 1244 the plaintiff's sudder naib set a peon over him and forced him to come into the town of Soory with his accounts, which he (the sudder naib) took into his own possession and then demanded immediate adjustment; that he (Ghose) on this sent for his mohurrir and begged to be allowed to explain his accounts, but the naib would not permit him to see them, and drew up an account himself for rupees 1,429-5, which he forced him to sign after heaping indignities upon him; that having thus got released from the naib's thralldom, he proceeded to plaintiff's house at Busooa, in zillah Hooghly, and told him what had happened, and plaintiff promised to look into the matter when he went to Soory; that on the 14th Asin 1244, he (Ghose) again went to plaintiff's house, and paid him the sum of 100 rupees, for which plaintiff granted him a receipt, but his demand for an adjustment of accounts was refused; that on

the 10th Asar 1247, he took to plaintiff's house a further sum of rupees 301, which plaintiff accepted in full of all demands, but he did not give him a receipt for the money on the pretence that he had not a stamp by him, saying he would grant him a written release when the accounts could be procured from Soory, but he failed to keep his promise; that in 1248 plaintiff got hold of the security Koondoo, and having dishonored him, demanded the money due on the account, which the naib had forced him (Ghose) to sign, and then sent him in charge of a peon to his (Ghose's) house with a message to the effect, that plaintiff would grant a release on payment of a further sum of 300 rupees; that being helpless he (Ghose) paid into the hands of the security, under date the 21st Bhadro 1248, the sum of 300 rupees as demanded, and learnt subsequently from Koondoo, that plaintiff gave him a release in writing; but that the account, which he (Ghose) had signed, was still retained on the pretence that it had not been received from Soory; that he has thus paid, in the aggregate, the sum of 701 rupees, which is not accounted for in the plaint.

In his reply to this answer the plaintiff stated that the defendant Ghose would have brought an action in the civil or criminal court if it were true that he had been forced to sign the account; that in Assar 1244, the defendant Ghose came to his house at Busooa and representing his inability to pay the whole debt at once begged he might be allowed to liquidate it by instalments, and at the same time offered the sum of 100 rupees, but plaintiff declining to accept so small a sum in payment of this debt held it in deposit to meet a demand against the defendant Ghose's father, and granted a receipt to that effect. He denied the payment of 301 rupees, and that he had given a release to the defendant Koondoo.

The principal sudder ameen decreed in favor of plaintiff. He considered it satisfactorily proved by the evidence of three witnesses, Bharut Nundee, Ramdhun Mundul, and Sreedhur Raee, that the defendant Koondoo signed the security bond, and by the evidence of two witnesses, Byrub Gorain and Shaikh Emam Buksh, that the defendant Ghose signed the account balance with his own free will and consent; and in corroboration of this evidence he instanced the debit and credit accounts of 1241, 1242, and 1243, produced by plaintiff as having been filed in his office by the defendant Ghose, and which were authenticated by the evidence of plaintiff's mohurrir Gouree Pundit, who recognized them as such. The omission of plaintiff to mention the present claim in his answer to the suit No. 191, the principal sudder ameen regarded as non-detrimental. In respect to the pleas of payment advanced by the defendant Ghose, he admitted the first item of 100 rupees, plaintiff having allowed that it had been tendered in payment of this debt; but the alleged payments of 301 rupees and 300 rupees

he rejected, the one because no evidence had been produced to prove it, and the other because it was unsupported by a receipt, and because the two witnesses produced by the defendant Ghose to vouch that the money had been paid to Koondoo were not worthy of confidence.

I cannot concur with the principal sudder ameen in his decision. I regard the claim as a fraudulent one, set up against the appellant in collusion with the defendant Ghose.

The evidence of the three witnesses, who are brought forward to prove the execution of the security bond of the appellant is unsatisfactory in my opinion; they depose that they came to the respondent's cutcherry at Busooa, accidentally, as the deed was being drawn up, one of them to demand payment of money due to him, another, a weaver, to receive the price of cloth supplied to respondent, and the third, a milkman, for the price of milk: it does not appear probable to me that the respondent would have trusted to accident to supply witnesses to attest the execution of the deed, and I therefore regard the evidence of such witnesses with suspicion, and the more especially so as the deed was not registered nor its validity confirmed by any collateral testimony.

But if we were to admit the security bond to be a valid document duly executed by the appellant, there would still remain to be proved the fact of embezzlement on the part of the defendant Ghose.

It is alleged that the defendant Ghose came forward of his own accord, and, producing his accounts showing a defalcation to the amount of rupees 1429-5, signed an account balance, promising to make good the money in the course of a couple of months: this circumstance, of itself an improbable one, took place it is said at the commencement of 1244 B. S., and yet it does not appear from the evidence adduced on the part of the respondent that from that time up to the date of the institution of this suit, being a period of upwards of seven years, the slightest attempt was ever made by him to recover the money either from the defaulter or his security. This is alone a *prima facie* reason for doubting the fact of embezzlement.

And the evidence of the two witnesses, who are brought forward to prove the execution by the defendant Ghose of the account balance, which I observe was originally drawn up on plain paper, a stamp having been affixed to it after the institution of this suit, is open to objection equally with the evidence of the witnesses to the security bond: one of the two witnesses is a peon, at that time in the respondent's employ, an ignorant man, who can neither read nor write, and yet he professes to remember the exact sum for which the defaulter had held himself responsible; the other is an oilman who happened to call in for a settlement of his oil account.

I cannot place implicit confidence in such evidence; and the debit and credit accounts, which the principal sudder ameen regards as a corroborating proof of the fact of embezzlement, from their appearance have evidently been recently prepared for the occasion. The witness Gouree Pundit, a servant of the respondent, recognizes them as being made out in the handwriting of the defendant Ghose: that they were written by the defendant Ghose is not denied, but that they are the fruits of collusion between him and the respondent I entertain not the shadow of a doubt.

Collusion between these parties is manifest from their pleadings, and its existence is confirmed by the fact that the defendant Ghose did not appear in the lower court until nearly ten months after the suit was instituted, when he filed his answer, containing the improbable story detailed above, with the special permission of the respondent's vakeel, notwithstanding the process of the court, for all that appears to the contrary, had been duly served on him several months prior, as far back as the month of December 1844.

For instituting a false claim against the appellant, the suit referred to in his answer constitutes a probable cause; and although I agree with the principal sudder ameen so far that the non-mention of this claim in that suit is no ground of itself for rejecting it, yet, with reference to the tenor of the respondent's answer to that suit, the plea is not an unreasonable one. The suit in question was instituted to recover the amount due on a bond for money lent by appellant to respondent on the 21st Agrahun 1249 B. S., in his answer the latter denied the claim *in toto*, and pleaded, *inter alia*, that the appellant owed him a large sum of money on account of advances made to him as *moodee* (provisioner) for the supply of his (respondent's) household, that he (appellant) had refused to settle accounts and had brought forward the suit on a forged bond out of revenge. Here was an opportunity of mentioning the present claim as well, and I do not think it would have been foregone had the claim existed at the time: moreover the excuse offered in the reply to the appellant's answer to this suit for not having mentioned it is unsatisfactory, for respondent's mookhtar could scarcely have drawn up such an answer as that filed in the other suit without communication with his client.

The above reasons have induced me to regard the claim, as I have before stated, as a fraudulent one; and I therefore reverse the principal sudder ameen's decision in so far as it affects the appellant, and decree the appeal to him with costs in both courts.

THE 13TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

CASE No. 141 of 1846.

*Regular Appeal from a decision of the Moonsiff of Amdahra,
Gholam Buttool, dated 16th May 1846.*

Sonatun Ghose, (Plaintiff,) Appellant,

versus

Nitai Ghose, Sishteedhur Ghose, Akalee Haree, and Gopal Gorain,
(Defendants,) Respondents.

THIS suit was instituted, on the 16th September 1845, to recover the sum of Company's rupees 31-5, the amount due on a bond alleged to have been executed by the four defendants in favor of plaintiff (appellant) on the 11th Poos 1250 B. S.

The defendant Sishteedhur Ghose in answer denied the claim, and pleaded that it was improbable that four men of different castes, inhabitants of two different villages, would execute one bond together, and that the plaintiff had included Akalee Haree and Gopal Gorain among the defendants with the sole view of getting them to file a *kubool juwab*, or deed of recognition of claim.

The other defendants did not appear in the lower court.

The moonsiff recorded his decision, under date the 26th May 1846, in the following terms. "The plaintiff's claim is not proved at all; the evidence of his witnesses is confused and contradictory, one being at variance with another. The defendant Sishteedhur Ghose, however, attended the court in person on the 6th of this month, and, acknowledging his signature to the disputed bond, admitted that he executed it alone, saying repeatedly that he would abide by the evidence of the witness Guteenath Mujoomdar by whom the bond was engrossed. Now Guteenath Mujoomdar deposes that he engrossed the bond at the joint request of plaintiff and Sishteedhur Ghose, and that the latter acknowledged to him that he had received the money. Since, therefore, Sishteedhur Ghose thus acknowledges to have received the money, the plea entered in his answer in denial of the claim must be regarded as a subterfuge to gain time. I suspect that he got the names of the other defendants entered in the deed unknown to them in order to saddle them with his own debts. The engrosser of the bond ought to be punished for forgery for writing at the request of another the names of persons who were absent; but as he is not in attendance, it would only be giving the court trouble to send for him. The suit is therefore decreed against Sishteedhur Ghose alone, the other defendants being released from responsibility."

This decision of the moonsiff is opposed to the evidence and the facts of the case. The witness *Guteenath Mujoomdar, I find,

deposed in his evidence that he merely engrossed the bond, and that it was not executed in his presence: "it was signed neither by the defendants nor by the witnesses in my presence" are the words he uses; and this fact is borne out by the appearance of the bond, the names of the defendants and the subscribing witnesses being written in a different colored ink from the writing in the text. The evidence of the subscribing witnesses does not appear to me either confused or contradictory; they deposed, in a manner which leaves no room for doubt, to the due execution of the bond by the whole of the defendants, some of whom, I remark, have responded to this appeal; and I therefore amend the moonsiff's decision, and decree to appellant the amount due on the bond against all four defendants (respondents), with costs of suit in both courts.

The moonsiff will be informed that the reason given by him for not enquiring into the forgery, if he thought forgery had been committed, is injudicial.

THE 21ST NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 127 of 1846.

Regular Appeal from a decision of the Moonsiff of Kundera, Mirza Ushkurree Fikrut, dated the 5th May 1846.

Degumber De, (Plaintiff,) Appellant,

versus

Neeloo Mundul, (Defendant,) Respondent.

THIS suit was instituted, on the 29th December 1845, to recover the sum of 14 rupees on account of money advanced for grain.

Plaintiff stated that on the 4th Poos 1252 B. S. he agreed to purchase from defendant 20 rupees worth of paddy to enable him to meet a demand for rent, and on the following day defendant weighed out to him 14 rupees worth of paddy, and, having no more in hand, begged to be advanced the full sum, saying, he would deliver the remainder of the grain in a couple of days, but he (plaintiff) declined trusting him, and having paid him the 14 rupees left the spot, desiring his people to convey the grain to his house; that defendant upon this importuned plaintiff's younger brother to advance him the 6 rupees required to make up his rent, and on being refused he stopped the paddy on its way to plaintiff's house; that plaintiff on this gave up the grain and demanded back the 14 rupees, but defendant declined to return the money; that on the 9th Poos plaintiff called a meeting of the principal men of the village before whom defendant acknowledged the receipt of the money, but he has put off payment with promises, and plaintiff is compelled therefore to institute this suit.

The defendant in answer acknowledged the transaction, but pleaded that plaintiff sent the 14 rupees to him by the hands of the village weighman; that he refused to receive it unless he was paid the full sum of 20 rupees, promising to deliver the remainder of the paddy in a couple of days when he had threshed it out; that plaintiff on this got angry, took back the money from the hands of the weighman, and returned the grain.

The moonsiff dismissed the suit. He had no confidence in the evidence of the plaintiff's three witnesses. The evidence of one of them, who deposed to having heard the defendant boast that he had overreached the plaintiff, he considered improbable; and the evidence of the other two he regarded as contradictory, inasmuch as there was a discrepancy between them in respect to the name of one of the persons who were present at the meeting referred to in the plaint. On the other hand he regarded the pleas advanced in the answer established by the evidence of the two witnesses examined on the part of the defendant.

In this decision I do not concur. The plaintiff's story is the most probable one, and the reason given by the moonsiff for rejecting the testimony of his witnesses, (two of whom Ram Pal and Sreedhur Mundul depose that the money was paid into the defendant's own hand,) is insufficient.

The defendant's witnesses Buddun Bagdee Chokeedar and Gopal Dome, who depose that the money was received back by the plaintiff from the hands of the weighman, who is since dead, are not of a class whose evidence is much to be depended upon, and suspicion attaches to them from the fact that their names were not given in till after a lapse of 37 days from the date the call for proofs was made.

For the above reasons I reverse the moonsiff's decision, and decree to plaintiff (appellant) the amount of claim, with interest from the date of the service of the process on the defendant, and costs of suit in both courts.

THE 21ST NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 144 of 1846.

*Regular Appeal from a decision of the Moonsiff of Kundera,
Mirza Ushkurree Fikrut, dated the 29th May 1846.*

Muthooranath Mitr, (Defendant,) Appellant,

versus

Khondhar Tujumul Hosen, (Plaintiff,) Respondent.

Chumpa Bibi, mother and guardian on the part of Khondhar Buduloo, Nuzuloo, and Fuzuloo, and other minors, heirs of Wajid Mea, deceased, Claimants.

THIS suit was instituted on the 4th December 1845, on a value of rupees 8-8.

Plaintiff stated that he held in mouzah Buzoorg Munohurpoor, under a pottah granted by the former putnee talookdars, bearing date the 7th Bysakh 1243 B. S., beegahs 9-15 of land, at a jumma of Company's rupees 9-9-7, which land belonged previously to Wajid Mea, who had resigned it; that at the commencement of 1250 B. S., the putnee rights in the mouzah were purchased at public sale by the defendant Kistodhun Chowdhry, to whom he paid the rent of that year in full; that on the 12th Kartik 1251, he paid to the gomashdah Brij Mohun Chowdhry, who has since been discharged, the sum of 1 rupee, and took a receipt as usual in his own name; that he has paid to the defendant Muthooranath Mitr (Brij Mohun Chowdhry's successor) the following sums, viz.

On the 2nd Agrahun 1251, by the hands of Huree Shaik, rupees, _____		1	0	0
5th Poos, paid himself, _____		4	0	0
29th Magh, ditto, _____		2	0	0
21st Chytc, by the hands of Heloo Shaikh, ———		1	0	0
30th Jeth 1252, by the hands of Mullung Shaik, _____		0	8	0
		<hr/>		
		Total, Rupees, 8 8 0		

That for these sums the defendant Muthooranath Mitr granted receipts in the name of the former ryot Wajid Mea, and plaintiff therefore sues to obtain a receipt in his own name, according to custom, together with penalty equal to double the amount paid.

The defendant (appellant) Muthooranath Mitr pleaded in answer that the lands were held by plaintiff in trust for the heirs of Wajid Mea, his brother-in-law, and he (defendant) accordingly gave receipts in Wajid Mea's name, and they were accepted by plaintiff, one after another, without any objection having been raised at the time, a fact which proves that the action has been brought by plaintiff with the sole view of defrauding his relations.

The defendant Kistodhur Chowdhry, the putnee talookdar, did not appear in the lower court.

The moonsiff, considering the plaintiff's case established, decreed the suit in his favor by awarding to him a receipt for rupees 8-8, and damages, under Section 63, Regulation VIII. 1793, to an equal amount.

This award is irregular, as it exceeds the value of the stamp on which the plaint has been brought; and it is untenable inasmuch as it is not borne out by the evidence adduced. The evidence of plaintiff's witnesses goes merely to prove that the defendant (appellant) refused to change the receipts, which he had given in the name of Wajid Mea; it fails altogether to show that plaintiff was entitled to, or had been in the habit of taking receipts in his own

name: on the other hand the evidence of the witnesses examined on the part of the defendant proves that the jumma has always been held in the name of Wajid Mea, for whose heirs (the claimants in this appeal) plaintiff acted as *surburakar* or manager.

For these reasons I reverse the moonsiff's decision, and decree the appeal to appellant with costs in both courts.

THE 24TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 313 of 1845.

Regular Appeal from a decision of the Moonsiff of Soory, Mahomed Saem, dated 27th November 1845.

Huree Purshad Rooj, Lukhee Kanth Rooj, and Adhurmunce Dasya,
Widow of Manik De, deceased, (Defendants,) Appellants,

versus

Sunkuree Dasya, (Plaintiff,) Respondent.

THIS suit was instituted, on the 1st October 1844, to recover the amount due on a bond.

The plaint set forth that the defendants, Huree Purshad Rooj, Lukheekanth Rooj, and Manik De (deceased,) borrowed from plaintiff the sum of 200 rupees under a bond bearing date the 25th *Asin* 1247 B. S., which stipulated that the money should be repaid in the month of Phalgun following; that they have paid the sum of 5 rupees, leaving due the principal sum of 195 rupees *plus* interest 104 rupees = 299 rupees, the value of the suit.

The defendants in their answer, filed on the 10th December 1844, denied the claim, and pleaded that it had been preferred in a spirit of revenge, in consequence of a quarrel which plaintiff had had with defendant Huree Purshad Rooj, who was employed by her as *gomashtah* up to the month of *Śrabun* 1251, when he took his discharge; that plaintiff had applied to Kulyan Chund Dutt, of Rajnugur, a person who kept old stamps by him, and who had instituted this suit in her name, falsely alleging that defendants had borrowed from her the sum of 200 rupees under a bond dated the 25th *Asar* 1247, on the understanding that he should have one half in event of his succeeding in obtaining a decree; that the bond had not been actually prepared, it having been delayed in the hope that defendants would compromise the matter.

On the following day, the 11th December, the defendants' vakeel, Tufusul Hosen, presented a petition to the moonsiff to the effect that he had according to custom furnished the plaintiff's vakeel with a copy of the answer, and the latter having pointed out to him a mistake in the month in which the bond was executed, viz. *Asar* for *Asin*, he examined his own copy of the plaint, and finding the

word *Asar* clearly written, he called upon plaintiff's vakeel to produce the rough draft of the plaint, which he did, and in this the word *Asin* bore an erasure, as it did also in the original plaint, which they had examined together; and he inferred from these facts that the original had been altered since it was filed, to meet the date of purchase of the stamp paper.

The moonsiff, having been satisfied by the explanation afforded by the plaintiff's vakeel, Madhub Chunder Dhur, whom he examined on the point on oath, that the correction which appeared in the plaint was made before the plaint was filed, proceeded to try the suit on its merits, and considering it proved, by the evidence of the four subscribing witnesses to the bond, and a Paunch Kowree Shaikh, the original purchaser of the stamp, that the deed was duly executed on the date it bore, viz. the 25th Asin 1247, a fact that had not been contravened by the evidence adduced for the defence, which merely went to prove a previous quarrel between the parties, he decreed the suit in favor of plaintiff.

The subject of the correction has been again brought forward in the reasons for appeal, and instanced as proof that the bond was written and antedated after the suit had been instituted, the record having been altered to suit the date of the stamp; but I am satisfied on further enquiry that no such fraud has been committed.

It appears from the evidence of the defendants' vakeel and of his mohurrir Gyaram Ghose, who have been examined in this court, that the alleged copy of the plaint produced by the former was taken from the rough draft kept by the plaintiff's vakeel and not from the original plaint, a fact which is borne out on comparing those documents one with another, for the two first exhibit corresponding errors in figures in two places, which do not appear in the original, the said copy therefore constitutes no proof that the record has been tampered with. The plaintiff's vakeel explains in his evidence that the mistake in the month was discovered after the plaint had been engrossed, and the alteration of the word *Asar* to *Asin* (which is effected in Bengalee by a couple of strokes of the pen) was made at the time in the fair copy, but not in the rough; and I see no reason to doubt his testimony.

But to satisfy myself that the bond was duly executed by the defendants, I have sent for and re-examined two of the subscribing witnesses, and have referred the case under Regulation VI. 1832 to a panchaet, who record their opinion that the claim is a just one; and, concurring in their finding, I confirm the decision of the lower court, and dismiss the appeal with costs.

THE 26TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 228 of 1846.

Regular Appeal from a decision of the Moonsiff of Soory, Koolodanund Mookerjea, dated 10th September 1846.

Noor Ale Khan, (Plaintiff,) Appellant,

versus

Nubai Singh, Dwarkanath Mitr, Muhut Gope, Gorachand Kubraj, Bhugecruth Mudduk, and Kisto Kanth, (Defendants,) Appellants.

THIS suit was instituted, on the 6th August 1845, to recover the sum of 32 rupees as damages for loss of crops on five beegahs of land, belonging to plaintiff, caused by wilful trespass on the part of the defendants in driving their cattle on the lands repeatedly, in the months of Magh and Phalgun 1251 B. S.

The defendants pleaded not guilty.

The moonsiff, with advertence to the unsatisfactory nature of the evidence of the three witnesses produced in support of the action, and to other facts and circumstances which tended to throw a doubt on its justness, dismissed the claim as not proved; and seeing no grounds for interference with his judgment, I confirm the same, and dismiss the appeal with costs.

THE 26TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 231 of 1846.

Regular Appeal from a decision of the Principal Sudder Ameen of Beerbhoom, Moulvi Nujumul Huq, dated 12th August 1846.

Raja Probul Narain Singh, (Plaintiff,) Appellant,

versus

Dhunputi Lal Singh, Boodun Chokeedar, Deboo Raot, Gobind Mangee, Doorga Mangee, Deboo Mangee, Mohun Singh, Motee Pundit, Akloo Mahuto, Ruttee Mundul, Bhatoor Mahuto, Bhagoo Singh, Toolsee Raee Raot, and Seebnath Singh, (Defendants,) Respondents.

THIS suit was instituted, on the 24th September 1844, by plaintiff (appellant) the talookdar of Pubeyan, to recover possession of beegahs 19-6-5-2 of land, with mesne profits, under the following circumstances set forth in the plaint.

The defendant Dhunputi Lal Singh, the ghatwal of talook Marro, having dispossessed plaintiff of 4 beegahs of land belonging to mouzah Buriarpore, talook Pubeyan, plaintiff instituted a suit

No. 445, to recover possession, and obtained from the pundit sudder ameen a decree, which was reversed in appeal, case No. 65, under date the 23d July 1832. But execution of the pundit's decree was taken out, and plaintiff put in possession of the land awarded, whilst the appeal was pending. In execution of the decree passed in appeal, the defendant instead of being reinstated in possession of 4 beegahs only, the quantity of land litigated, was put in possession of about 50 beegahs, and plaintiff in consequence filed a petition of objection, which was made over for decision to the principal sudder ameen, who deputed an ameen to make a local enquiry, the result of which proved that the 4 beegahs of land originally litigated were comprised in *dags* (or plots) Nos. 1 to 5 of the ameen's measurement papers, amounting by actual measurement to beegahs 6-10, and that the defendant had obtained possession of an excess of beegahs 19-6-5-2, comprising dags Nos. 6 to 32, and the principal sudder ameen, on the 26th December 1842, accordingly awarded to plaintiff possession of the land taken in excess. The defendant Dhunputi Lal Singh, dissatisfied, preferred a summary appeal, and on the 13th July 1843, the principal sudder ameen's decision was reversed by the judge on the ground of the court peon's boundary statement. Plaintiff on this applied for a review of the order, which was disallowed, and a special appeal was rejected by the Sudder Dewanny Adawlut because the period prescribed for such had expired. The plaintiff therefore instituted this suit to recover possession of the land, with mesne profits, on a total value of rupees 353-4, and he makes the other defendants, whose names are recorded above, parties to the suit, because it was by their bad advice and pointing out (*nishandihi*) that the defendant Dhunputi Lal Singh got possession of the land in collusion with the court peon.

The defendant, Dhunputi Lal Singh, in answer pleaded that the suit was unjust; that under Construction 1129 an order passed in execution of a decree was final, and was not subject to a regular suit; that it was proved in execution of the decree, by the decision passed in the summary appeal; that the land originally litigated was comprised in dags Nos. 25 to 32 of the ameen's measurement papers, and dags Nos. 1 to 24 belonged to defendants' ghatwalee talook Marro, and had never been disputed.

The other defendants did not appear.

The sirrishtadar of the lower court, having been deputed to make a local enquiry, gave in his report, accompanied by a map, to the effect that the land originally litigated was comprised in dags Nos. 2, 3, 4, 6, and 7, of the ameen's measurement papers, and that the rest of the land belonged to plaintiff's mouzah Buriarpore. This report was rejected by the principal sudder ameen in his decision, the subject of the present appeal, on the ground that it was opposed to the evidence adduced in the case of appeal No. 65. The

principal sudder ameen recorded that the evidence of the witnesses Gobind Mangee, Deboo Raot, and Mohun Singh, (on the grounds of which the decision, passed by the pundit sudder ameen was reversed by the judge,) stated that the disputed land was bounded on the south by Pathora jungle, and on the west by a *guriya* or small tank; that this corresponded with the boundaries of the lands comprised in dags Nos. 25, 26, 27, 30, 31, and 32, of the sirrishtadar's map, as well as the boundaries of the disputed land, as laid down in a map filed by Dhunputi Lal Singh in the case of appeal No. 65, afore-mentioned; that the land comprised in dags Nos. 28 and 29 was proved by the evidence of defendants' witnesses to be included within the line of the Pathora jungle; and that the rest of the land being situated on the north and north-west sides, in which directions it is bounded by lands of Chuki Paharee (a mouzah of talook Marro) undisputed, could not possibly belong to Buriarpore; that plaintiff could produce no documentary evidence in support of his allegations: and for these reasons he (the principal sudder ameen) decreed to plaintiff possession of 6 cottahs, 5 gundahs of land comprised in dags Nos. 28 and 29, and dismissed the remainder of the claim.

It appears that the plaintiff (appellant) did not give the boundaries of the disputed land in his original plaint filed in case No. 445, and the pundit sudder ameen decided the suit without ascertaining them. The pundit's decision was set aside in appeal by the late judge, Mr. F. Millett, on the evidence of the witnesses Gobind Mangee, Deboo Raot, Mohun Singh, and Deboo Singh, (who have been made respondents in this case,) who gave minute particulars of the boundaries, which were not questioned at the time nor contradicted by counter testimony; and the court peon having, in execution of the late judge's award, given possession in conformity with the boundaries as laid down in those witnesses' depositions, possession was so maintained by the decision passed by me in the summary appeal referred to in the plaint. The evidence of the witnesses on which the late judge's award was founded (and which the appellant impugns in his reasons for appeal,) cannot be set aside, and the order passed in execution of that award cannot be made the subject of a new suit under the Construction quoted in the answer; and there being, therefore, no grounds for interference with the principal sudder ameen's decision, I confirm the same, and dismiss the appeal with costs.

THE 28TH NOVEMBER 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 268 of 1846.

Regular Appeal from a decision of the Principal Sudder Ameen of Beerbhoom, Moulvi Nujumul Hug, dated the 19th August 1846.

Huree Sunker Mookurjee and Nubin Chunder Mookurjee,
(Defendants,) Appellants,

versus

Roop Mohun Kanjee Mahuta, (Plaintiff,) Respondent.

THIS suit was instituted by plaintiff (respondent) *in forma pauperis*, on the 1st May 1844, to recover possession of 43 beegahs 5 cottahs of rent-free land, situated in mouzahs Kelejora and Poochma, with mesne profits from 1242 B. S.

The plaint set forth that the land was held as bruhmutter under a *sunnud* granted to plaintiff's grandfather Bungseedhur Kanjee by Muharaja Telokchund Buhadoor, in 1165 B. S., the same being in renewal of a former *sunnud*, which had been lost; the tenure was again confirmed in 1171 B. S. under a *char sunnud* granted to plaintiff's father Ootsub Kanjee, on whose death plaintiff and his brother Nudiyar Chand Kanjee succeeded to possession, which they enjoyed without interruption till the year 1242 B. S., when they were forcibly ousted by the defendant Hureesunker Mookurjee, who had recently purchased talook Kelejora, &c., at public sale; and plaintiff therefore sought to recover possession under the provisions of Clause 11, Regulation XIX. 1793, estimating the value of the suit at 18 times the amount of the annual rent, computed at 60 rupees, and the mesne profits at the same rate;—total value, including interest on the mesne profits, Company's rupees 1952-8-18-3.

The defendant Hureesunker Mookurjee and Nubin Chunder Mookurjee, (the latter of whom was made a defendant under a supplemental plaint, as having acquired the talook by private sale since the institution of the suit,) pleaded in answer that the plaintiff's brother ought to have sued as well; that plaintiff was not dispossessed in 1242 as stated; that the land was *mal* and the rents had been collected, as such, from 1239 B. S., in which year defendant Hureesunker Mookurjee purchased the talook at public sale, as they had previously been collected under the former talookdar; that some of the ryots of the talook had entered into a conspiracy and got up this false suit; that the plaint did not state that the *sunnud* had been registered, and therefore under Sections 25 and 26, Regulation XIX. 1793 the suit could not be heard; and it would be proved on the case being referred to the collector under Regulation II. 1819, that the pretended *sunnuds* are forgeries. The mesne profits they maintained had been over estimated.

The plaintiff in his reply stated that his brother Nudiyar Chund Kanjee died leaving a widow and a minor son, who were under his protection; that he was the *malik* of the household; and that the statement that rent had been paid to the former talookdar was untrue, as he never interfered with the lands.

On the 24th December 1844 Parbutti Dibya, widow of Nudiyar Chund Kanjee, filed a petition on the part of herself and minor son Annut Ram Kanjee, acknowledging her brother-in-law's authority to bring this action, and stating that he was the *malik* and living in family partnership with her.

On the 3d March 1845 the suit was referred, under Section 30, Regulation II. of 1819, to the collector of Burdwan for report; and on the 16th September following a return was made by the collector, Mr. Crawford, to the effect that although there was no trace in his office of the sunnud of 1165 B. S., produced by the plaintiff, having been registered in 1209, yet from the appearance of the sunnud and of the *char*, dated 1171, the latter of which bore the signature of Mr. Marriott, the late superintendent of the *bazee jumeen duffer*, he had no doubt that they were both genuine documents; that defendants had produced no proofs in support of their pleas; and he therefore declared the tenure to be valid.

The principal sudder ameen laid down the following points for decision; first, is the plaintiff's statement that the land was held as *lakheraj* (rent free) true or not; secondly, has the proprietor of an estate the power to dispossess a *lakherajdar*.

After recording the opinion of the collector in full, the principal sudder ameen proceeded:

"Defendants have produced two files of accounts bearing dates 1224 and 1241 B. S., to prove that the disputed land paid rent; but they have failed to authenticate them although their subpoena has been twice issued. They have petitioned that the documents produced by the plaintiff might be sent to the Raja of Burdwan for report; but there is no use to have recourse to that measure, for it appears from a decision passed by the late principal sudder ameen, on the 30th November 1839, in suit No. 34, that a similar application complied with in that case had led to no result, the raja having reported that his books and papers of 1161 and 1171 B. S., were all in confusion. But let that be as it may, the evidence of plaintiff's witnesses proves that the land has been held as *lakheraj* from time out of mind, and the defendants consequently cannot dispossess him of their own authority." The principal sudder ameen therefore, with reference to the provisions of Section 2, Regulation XIX. 1793, decreed possession and mesne profits, estimating the latter at the rate of 55 rupees a year, the lowest rate mentioned by the witnesses, the same being made payable from

1242 to 1249, by the defendant Huree Sunkur Mookurjee, and from 1250 to the date of possession by the defendant Nubeen Chunder Mookurjee.

In the reasons for appeal the appellants object, *inter alia*, that the respondent's sister-in-law Parbutti Dibya possesses property, and that the suit cannot be heard *in formd pauperis* on that ground; but such an objection cannot be admitted in appeal: the appellants had ample opportunity for preferring it whilst the suit was pending in the lower court, which they omitted to do.

Under the law quoted in the plaint a proprietor cannot subject lands alienated before the 1st December 1790, the date of the decennial settlement, to the payment of revenue, without having previously obtained a judicial decree for that purpose. There is no doubt, from the evidence adduced, that the land in dispute had been held by respondent and his ancestors as rent free from a period anterior to that date, and that the defendant Huree Sunkur dispossessed him in 1242; and therefore, whether the rent free tenure be valid or not, (and this is a point which the principal sudder ameen has very properly not disposed of,) the respondent is entitled to be reinstated in possession and to receive the mesne profits for the period during which he has been ousted; and as the amount of mesne profits awarded is in conformity with the evidence adduced, I confirm the decision of the lower court, and dismiss the appeal with costs payable by appellant.

ZILLAH BHAUGULPORE.

THE 2D NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 17 of 1846.

Appeal from a decision of Moulvee Ali Buksh Khan, Sudder Ameen of Monghyr, dated the 16th April 1846.

Joga or Joograj Sing, (Plaintiff,) Appellant,

versus

Mohun Sahoo and Goolab Sahoo, (heirs of Faqueera Sahoo, deceased,) Teloke Sing, and Musst. Deo, *alias* Annund Dey Coor, (Defendants,) Respondents.

CLAIM, Company's rupees 742-7-9, for possession of landed property with mesne profits.

This suit was instituted by the appellant, on the 20th February 1845, in order to set aside a moostajeeeree pottah of a 6 *dams* 13 *cowries* and 6 *bowries* share in mouza Audoopoor, pergunnah Sulleemabad, which appellant claims as his ancestral property. The plaint set forth that appellant's father died in 1235 F., when he (appellant) was only one year old; that, when he reached the age of eight years, Faqueera Sahoo (by improper means) got a moostajeeeree pottah of the share in question, as well as of Teloke Sing's (appellant's uncle's) portion to the same extent, amounting in all to 13 *dams* 6 *cowries* 12 *bowries*, ostensibly from Teloke Sing and his (appellant's) mother, *but without the knowledge of the latter*, for 13 years from 1242 to 1254 F. S.; that Faqueera Sing, under colour of this document, enjoyed the profits of the property during his life time, and, after his death, his sons, Mohun Sahoo and Goolab Sahoo, have done so; that when plaintiff (appellant,) reached his majority, and discovered how his property had been disposed of, he attempted to take possession of it, but was prevented by Mohun Sahoo and Goolab Sahoo, and constrained, in consequence, to institute this suit.

Mohun Sahoo and Goolab Sahoo denied the existence of the *moostajeeeree* pottah alluded to by appellant, and pleaded that, at the end of Bysakh 1241 F. S., Teloke Sing, plaintiff's uncle, and his mother Musst. Deo Coor, borrowed a sum of 767 rupees from Faqueera Sahoo, (the father of Mohun and Goolab,) for the repayment of which they *mortgaged* the property in question to him, under a deed bearing date the 22d May 1834, in which plaintiff's mother styles herself "Musst. Annund Dey,

mother and guardian of Joograj Sing;" that, at the time this instrument was executed, plaintiff was 18 or 19 years of age, and that he was cognizant of the transaction; in proof of which they (Mohun and Goolab) produced the mortgage deed referred to.

The sudder ameen, after taking evidence from both parties, decided that plaintiff's (appellant's) claim was untenable, in as much as no sufficient proof of a moostajeeree pottah had been given; but, on the contrary, the mortgage of the property to Faqueera Sahoo, by plaintiff's mother and guardian, and Teloke Sing, had been established.

He rejected an application from plaintiff's vakeel to file an amended plea designating the deed as one of mortgage, on the grounds that the error was *intentional*, and dismissed the claim with costs.

In appeal from this decision, it is pleaded that proof of the deed having been signed by plaintiff's mother has not been adduced, nor has it been shewn that the latter was the duly constituted guardian of the former. That the rejection, by the lower court, of the application to be allowed to file an amended plaint was contrary to Construction No. 1363, to clause 3, section 6, Regulation XXVI. 1814, and Circular Orders of the 14th October 1842. That the evidence of defendants' witnesses was contradictory, and that plaintiff produced two of the subscribing witnesses to the deed whose testimony went to shew that plaintiff's mother did not sign it.

JUDGMENT.

That the property was pledged to Faqueera Sahoo in satisfaction of a debt, is clear from the evidence of the witnesses of *both* parties; the only difference in their testimony upon that point is that the plaintiff's witnesses state that neither plaintiff nor his mother were present at the time the instrument was executed, while those of the defendants depose that plaintiff was present from the first, and that, after matters had been arranged by Teloke Sing, the money was taken to Musst. Aunund Dey, who, in presence of the witnesses, affixed her *mark* to the deed. The property, it is admitted, has ever since been in possession of Faqueera Sahoo, and his sons, (the defendants,) and the natural inference is that, had such possession been acquired by fraud, (as asserted by plaintiff,) either plaintiff's mother or himself would, long ere this suit was instituted, have sought redress from the court, especially, as it appears from the evidence of defendant's witnesses that plaintiff was old enough to bear a part in the transaction, when the deed was written. Both Teloke Sing and plaintiff, it appears from the copy of a decision of the sudder ameen No. 25 of 1844, dated 20th November 1845, borrowed a sum of 300 rupees from Faqueera Sahoo, on the 1st Jeyth 1241 (three days after the execution of the deed of mortgage,) from which it is evident that the first named must have nearly (if not fully)

attained his majority when the transaction, last alluded to, took place. It is worthy of remark that neither Teloke Sing nor Musst. Aunund Dey have defended this suit, which I cannot regard in any other light than as an attempt to defraud the representatives of the mortgagee. The appeal is dismissed with costs, and the judgment of the lower court affirmed.

THE 5TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 271 of 1846.

Appeal from a decision of Moulvee Mohioodeen, Moonsiff of Noorgunge, dated the 11th of August 1846.

Doodraj Sing *alias* Dodhun Lal, (Plaintiff,) Appellant,

versus

Bechoo Coor Ghatwaul, (Defendant,) Respondent.

CLAIM, Company's rupees 135-9-9, principal and interest of a bond.

This suit was instituted, on the 6th of February 1846, by the appellant, whose petition of plaint set forth that, on the 23rd Falgoon 1250 F. S., (corresponding with the 4th of March 1843,) the respondent* borrowed a sum of Sicca rupees 193-7-9, from him, but, owing to the difficulty of procuring a one rupee stamp, there were two bonds drawn out on paper bearing a stamp of 8 annas, one for Sicca rupees 100, and the other (the subject of the present suit) for Sicca rupees 93-7-9, to be paid, with interest, in Maug 1251 F. S., which promise, however, was not made good by respondent.

*The defendant (respondent) did not defend the suit, nor acknowledge the service of the notice issued by the lower court, but, on the 18th May 1846, a petition was presented by one Toolaram to the effect that he was the real creditor in the case, the ostensible plaintiff (a relative of his) having been employed by him to conduct his business as mohajun, while he (Toolaram) conducted the duties of putwarree; at the same time intimating that *he had no objections to a decree issuing in plaintiff's name* in this and the other suits instituted against the same defendant.

The moonsiff's judgment was to the effect that, *although the defendant did not appear*, yet he considered the claim to be a fictitious and fraudulent one, and he, accordingly, dismissed it with costs. He did not, however, assign any reason which would have induced the plaintiff to commit the fraud imputed to him.

In appeal it is urged that the execution of the bond by respondent has been duly proved by the subscribing witnesses; that the moonsiff took no evidence from Toolaram in support of his

statement that he was the real plaintiff; and that in a former suit, decided by the same moonsiff on the 18th April 1846, a decree was passed in plaintiff's favour against the respondent in this suit, to which no objections were made in appeal.

This decision is by no means creditable to the moonsiff, and his proceedings have been very irregular. In admitting the suit, he has altogether neglected the rule of practice prescribed by this court of the 6th September 1841, with a view to guard against the institution of fictitious suits. He has also entirely omitted to make the enquiries prescribed by Clause 2, Section 21, Regulation XXIII. 1814, as explained by Construction No. 775 and Circular Order of the Sudder Dewanny Adawlut, dated the 30th July 1841. He has not taken any evidence from Toolaram (the third party) in support of his assertion that he is the real plaintiff; and yet he has dismissed the claim on the strength of such assertion. Had the moonsiff seen reason to suspect fraud or collusion, he ought to have summoned both the plaintiff and Toolaram in person, and instituted such enquiries as would have elicited the real facts of the case, and placed it beyond a doubt whether the claim was a *bona fide* one, or not, and also, *by whom, and for what purpose*, the fraud was committed, (if fraud there was;) instead of which, he has gone entirely upon mere supposition, unsupported by evidence, and left the matter in a most unsatisfactory and uncertain state. Even had the suit been proved to be a fictitious one, he should have *nonsuited* the claim under Circular Order of the 29th July 1809, instead of *dismissing* it. I look upon the decision of the lower court as having been passed without sufficient investigation, and grounded upon mere assumption, wholly unsupported by proof, and I accordingly remand the suit, in order that the moonsiff may supply the omissions above noticed, and, after having thoroughly investigated the matter, and ascertained the real facts of the case, pass such a decision as may appear conformable to justice and to the regulations. That there has been fraud in this case on the part of *some one*, is evident from the petition which the appellant filed on the 30th of last month, praying for the attachment of the surplus sale proceeds of the respondent's ghatwalee mehal, in deposit in the collector's office, which, the petition avers, he (the respondent) is about to take away, on the strength of a collusive decree obtained by him in the sudder ameen's court in the name of one Shah Mozuffer Ali; and such being the case, it appears proper, with reference to Construction No. 1299, that the sale proceeds in question should be held in deposit until this suit is decided. It is therefore ordered, in addition, that the sale proceeds of Ghaut Telghurree, (originally attached by moonsiff on the 9th February 1846,) be retained in deposit pending the disposal of this case, and the six following ones, and that a copy of

these orders be transmitted to the sudder ameen for his information.

The moonsiff is also to be informed that serious notice will be taken of any future similar irregularities on his part.

The usual order for the refund of stamp duty and adjustment of costs.

THE 5TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 272 of 1846.

Appeal from a decision of Moulvee Mohioodeen, Moonsiff of Noor-gunge, dated the 10th of August 1846.

Doodraj *alias* Dodhun Lal, (Plaintiff,) Appellant,
versus

Bechoo Coor Ghatwaul, (Defendant,) Respondent.

CLAIM, rupees 138-10-3.

Remanded for re-investigation for same reasons as No. 271.

THE 5TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 273 of 1846.

Appeal from a decision of Moulvee Mahioodeen, Moonsiff of Noor-gunge, dated the 11th of August 1846.

Doodraj Sing *alias* Dodhun Lal, (Plaintiff,) Appellant,
versus

Bechoo Coor Ghatwaul, (Defendant,) Respondent.

CLAIM, Company's rupees 114-9-3.

Remanded for re-trial for reasons given in case No. 271.

THE 5TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 274 of 1846.

Appeal from a decision of Moulvee Mohioodeen, Moonsiff of Noor-gunge, dated the 11th of August 1846.

Doodraj Sing *alias* Dodhun Lal, (Plaintiff,) Appellant,
versus

Bechoo Coor, (Defendant,) Respondent.

CLAIM, Company's rupees 138-10-3.

Remanded for re-investigation for same reasons as No. 271.

THE 5TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 275.

Appeal from a decision of Moulvee Mohioodeen, Moonsiff of Noor-gunge, dated the 11th of August 1846.

Doodraj Sing *alias* Dodhun Lal, (Plaintiff,) Appellant,
versus

Bechoo Coor, (Defendant,) Respondent.

CLAIM, Company's rupees 114-6-3.

Remanded for re-investigation for same reasons as No. 271.

THE 5TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 277.

Appeal from a decision of Moulvee Mohioodeen Moonsiff of Noor-gunge, dated the 11th of August 1846.

Doodraj Sing *alias* Dodhun Lal, (Plaintiff,) Appellant,
versus

Bechoo Coor, (Defendant,) Respondent.

CLAIM, Company's rupees 25-8-6.

Remanded for re-investigation for same reasons as No. 271.

THE 5TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 278.

Appeal from a decision of Moulvee Mohioodeen, Moonsiff of Noor-gunge, dated the 11th of August 1846.

Doodraj Sing *alias* Dodhun Lal, (Plaintiff,) Appellant,
versus

Bechoo Coor, (Defendant,) Respondent.

CLAIM, rupees 137-10-8.

Remanded for re-investigation for same reasons as No. 271.

THE 9TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 18 of 1846.

Appeal from a decision of Moulvee Ali Buksh, Sudder Ameen of Monghyr, dated 14th April 1846.

Kirpa Roy, Ajeet Roy, Neela Roy, and Nurput Roy, (Defendants,) Appellants,

versus

Mussumatun Bukshun and Taytun, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 944-2-10.

This suit was instituted by the respondents on the 16th December 1844. Their petition set forth that the appellants' ancestor, Doola Roy, took in farm from them an 8 annas share of mouzah Doolaurpoor, pergunnah Maldah, extending from 1237 to 1245 F. S., at an annual jumma (or rent) of Sicca rupees 401, one year's rent being paid in advance as security; that the farmer having died in Bysack 1247 F., he was succeeded by his father Choolhum Roy, his brothers Ajeet Roy, Kirpa Roy, Neela Roy, and Nurput Roy, and his son Chummun Roy, who held possession of the farm; that, on making up the accounts for 1237 and 1238 F. S., a balance of 6 rupees, 3 annas, 16 dams, was found due by them, after crediting them with the amount deposited; that they agreed to give up the lease from 1239 F., but, instead of doing so, drove off the omlah whom the respondents had deputed to collect from the ryots, and took the profits of 1239 F. themselves; that plaintiffs, thereupon, instituted a summary suit before the collector for the arrears due for 1239 F., amounting to rupees 422-6-17, with interest, and on the 3d of January 1833 A. D., obtained a decree from which the appellants did not appeal in any court; that, on the death of Choolhum Roy, the other individuals above named, with Koonjul Roy, inherited his estate, but none of them paid the amount of the summary decree, for the recovery of which, together with the costs of suit, amounting in all to Sicca rupees 442-9-7½, and adding an equal amount of interest, this suit is instituted.

Ajeet Roy, Kirpa Roy, Neela Roy, Koonjul Roy, and Nurput Roy, denied having had any thing to do with the farm, and pleaded ignorance of the summary suit, alleging that respondents did not take any *piadu* from the collector's court to their place of residence (Khodgatchee.) They also denied having had any connection with Doola Roy.

Chummun Roy (the son of Doola Roy) admitted that the lease was taken by his father, as set forth in the petition of plaint, but pleaded that the latter died in Chyte 1247 F., leaving only two

heirs, viz. Chummun Roy himself, and another son called Moorut Roy, who had possession of the farm till Poos 1240 F. S., up to which time they paid, in cash and grain, to eazy Sabir Ali, (the husband of Musst. Taytun, respondent,) a sum of rupees 1203 in full of the rent of the mehal; that, so far from there being any thing *due* to respondents, the latter have not refunded the 401 rupees deposited as security. He also pleaded that the claim was barred by the law of limitations.

The sudder ameen, after taking evidence from both parties in support of their respective statements, decided that, as none of the defendants in the summary suit had appeared before the collector, and as they did not subsequently bring any action in the civil court to contest the award, the summary decision had become final and irreversible, and, consequently, the pleas now advanced by the defendants could not be listened to. He, accordingly, gave a decree in the respondents' favor for the full amount claimed against all the defendants except Koonjul Roy, whose inheritance of Choolhum Roy's estate he did not consider to be proved.

In appeal from this decision it is pleaded that the witnesses brought forward by appellants have proved that they, as well as Choolhum Roy, lived *separate* from Doola Roy, and had nothing to do with the farm in question, the lease for which was made out in the name of Doola Roy only. That the summary decree was obtained *ex parte* through the contrivance of the respondents, (and without the knowledge of appellants,) who got two of their own servants to certify that they (appellants) could not be found when the process was issued from the collector's office. That these very persons have given evidence before the sudder ameen in denial of their having so certified. That notwithstanding that the object of the summary award was to enforce immediate payment of the arrear claimed, the respondents did not sue out execution, for fear that appellants, on being thus informed of the existence of the decree, would institute a regular suit to contest the award. That, in one of the summary claims, respondents named only *three* persons, viz. Choolhum, Chumun, and Ajeet, as heirs of Doola Roy; whereas, in the other suit (the one upon which this action is based) they have named no less than six individuals.

JUDGMENT.

The summary decree upon which this action was based having been passed *ex parte*, upwards of 12 years antecedent to the institution of this suit, and execution not having been applied for during that interval, are circumstances, of themselves, sufficient to render it very doubtful whether the appellants were duly informed of such a decree having been passed against them, and the sudder meen, in refusing to listen to their plea to that effect, has acted,

in my opinion, contrary both to law and to equity, the 6th Section of Regulation VIII. 1831, which restricts the admission of regular suits to contest the justice of summary awards for arrears of rent to one year, distinctly states that such period is to be calculated "from the date of delivery, or of the tender to the party against whom the award is made, of the collector's decision," thereby making the *knowledge* that such a decision had been passed an essential condition. In the present case, there is no proof whatever that the appellants had any intimation of a summary decree having been passed against them, previous to the institution of this suit; and I think it was incumbent on the sudder ameen to have enquired into the objections urged by them. I accordingly remand the suit, in order that he may revise his decision, and, after enquiring into the appellants' pleas, substitute for it such a one as may be conformable to justice. The usual order for the refund of the stamp duty, &c.

THE 10TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 19 of 1846.

Appeal from a decision of the Sudder Ameen of Bhaugulpore, Baboo Nocoor Chunder Chowdry, dated 29th April 1846.

Mr. John Oman, (one of the Defendants,) Appellants,

versus

Muddun Thakoor, (Plaintiff,) Respondent.

CLAIM, Company's rupees 370-12-7½.

This suit came before this court in appeal on the 23d April 1845, and was remanded for re-investigation according to the decision passed upon that date, of which the following is a copy.

"This is a claim for rupees 370-12-7½, which two of the plaintiff's ryots (Sookaee Munder and Pershad) owed him on account of indigo advances and rent, and for which Mr. Lynch, the *karpurdaz* (or manager) of Mr. J. Oman, made himself responsible, by executing an instalment bond on the 4th September, 1842, stipulating to liquidate it by instalments.

"Mr. Lynch did not defend the suit, and Mr. Oman pleaded that the instrument was executed without his knowledge, and without any authority from him.

"The sudder ameen, after questioning three of his vazeels as to the usage of indigo planters as regards such matters, gave a decree against both defendants, from which Mr. Oman has appealed.

"As the investigation of the lower court is not sufficiently complete to enable me to form a correct decision, I return the

case for re-investigation, in order that the sudder ameen may take the evidence of three or four of the most respectable indigo planters of this district, unconnected with the parties, as to the usage in such cases, and that he may call upon plaintiff for proof of his having demanded payment of the debt from Mr. Oman, and of the latter having said that he would pay it, and to produce any other similar instruments executed by Mr. Lynch, during the time that he was manager, also that he may call upon Mr. Lynch for his defence, and for any proofs that he may wish to adduce in support of it, and upon the appellant for any proof that he may have to bring forward in refutation of the claim."

The sudder ameen, after taking further evidence in conformity with these instructions, came to the following decision. That it had been proved by the document itself, the evidence of witnesses, and Mr. Lynch's own admission, that the *kistbundee* was executed by the latter as *karpurdaz* of Mr. J. Oman, and for the benefit of the latter, in as much as several of plaintiff's witnesses had deposed to the crops which were cultivated by Sookaee and Pershad, (the ryots for whose debt to plaintiff Mr. Lynch became responsible,) having been taken to Mr. Oman's factory; to their having since cultivated the lands of Mr. Oman's *ijarah*, and to their having furnished indigo plant to him without receiving advances; that it had likewise been proved in evidence that Mr. Oman, on being pressed by plaintiff for payment of the debt, promised liquidation; that the evidence of Messrs. Landale, Piron, Fulton, and Dussumier, indigo planters, went to shew that, in such cases, the proprietor of the factory, and not the manager, is responsible; that a written opinion, obtained from certain indigo planters by plaintiff and attested by witnesses, is in favor of the same construction; that the only indigo planters whose evidence the appellant could procure in support of *his* views, were Messrs. D. Oman, Elphinstone, and Bennett, one his brother, the other his partner, and the third in his employ. For these reasons, and with reference to the case reported at page 97 of the 1st volume of the Sudder Dewanny Reports, he decreed the case against Mr. John Oman only, exempting Mr. Lynch from liability.

In appeal from this decision it is pleaded, among other matters not deserving of notice, that Mr. Lynch was not *karpurdaz* on the part of Mr. Oman, but merely his agent, or *moktar*; that no sufficient proof has been adduced that the debt was incurred by the latter for the benefit of the factory, the witnesses who deposed to that effect being under the influence of the plaintiff; that the evidence of Messrs. Landale, &c. has not been correctly stated by the sudder ameen, in as much as it was to the effect that the proprietor of a factory is only liable for debts incurred by his *karpurdaz*, or agent, which are entered in the account books (*rokhur*,

and *mascoobar*) of the factory, which has not been done in this instance. (It is here to be observed that the books produced by the appellant in the lower court were rejected because they were not signed by Mr. Lynch.) After the *mojbat* (or reasons) of appeal had been filed, the *vakeels* of the appellant produced a bond said to have been executed by Sookaee Munder, &c. in favor of Mr. Lynch, as *karpurdaz* of Mr. Oman, for the amount of the instalment bond in question, and which bond, the appellant states, Mr. Lynch had pledged, with others, to David Oman, who became surety for him (Mr. Lynch) when he was arrested in execution of a decree of court; but no allusion to this document is to be found on the proceedings.

In this case, with the exception of Mr. John Oman's brother, partner, and assistant, all the respectable indigo planters of the district who have signed the written opinion filed by the plaintiff, or given their evidence in the suit, are in favor of the responsibility of the proprietor, under the circumstances set forth; and, as this is a case which must be decided according to local usage, I see no reason for impugning the justness of the *sudder ameen's* decision of the 29th of April 1846, which is hereby affirmed, with costs against the appellant.

• THE 13TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 21 of 1846.

Appeal from a decision of Baboo Nocoor Chunder Chowdry, Sudder Ameen of Bhaugulpore, dated 19th of May 1846.

Khurrugjeet Sing, (Plaintiff,) Appellant,

versus

Damoodur Sing and others, (Defendants,) Respondents.

CLAIM 775 rupees, to get the plaintiff's (appellant's) name entered in the collector's books, as purchaser of mouza Moorho, pergunnah Nursingpoor-Koorah.

This suit was instituted, in the court of the *sudder ameen* at Monghyr, on the 25th February 1845, but was, subsequently, transferred to Bhaugulpore, on a *sudder ameen* being attached to that station. The plaint set forth, that, on the 9th Maug 1246 F. S., the defendants sold the above mouza for Sicca rupees 775 to plaintiff (appellant,) received the purchase money, and gave up possession, but would not get a mutation of names effected on the collector's books.

The defendants admitted the sale, and requested that a decision might issue, accordingly; but, before this could be done, Sheo-sahoy (an inhabitant of Mozufferpoor in Tirhoot) came forward as

oozoordar (or objector,) stating that the defendants were his debtors, and that the mouzah in question had been attached by the court in execution of a decree which he held against them, when Gondee Sing (the brother-in-law of Damoodur Sing) put in a claim to it as purchaser of Moorho and other villages, which the principal sudder ameen disallowed on the 2d November 1840, and this order was upheld in appeal both by the judge and the Sudder Court; that notwithstanding this, the defendants got Bondee Sing to institute a regular suit to the same effect, and on the 20th April 1843, the principal sudder ameen passed a decree in his favour for the other villages mentioned in the bill of sale, but excluding Moorho; that this decision was reversed in appeal by the acting judge on the 5th January 1844, and *all* the villages included in the *kewallah* ordered to be sold in satisfaction of his (Sheosahoy's) decree; that this suit has been got up collusively by the defendants, and is inadmissible under Section 12, Regulation III. 1793, and Construction No. 1129.

The sudder ameen, after referring to the acting judge's decision of the 6th January 1844, and the record of that case, as well as of the execution of the decree, and after ascertaining from two decrees of the principal sudder ameen's court that the amount of Sheosahoy's decrees against respondents had not been realized, was of opinion that the suit was inadmissible under Section 16, Regulation III. 1793, and could not be entertained until such time as the full amount of the objector's decrees should be realized; he accordingly dismissed the claim.

Nothing new is pleaded in appeal, and as the suit is evidently a collusive one, (a fact which is sufficiently apparent from the petition of plaint omitting all mention of the former proceedings detailed in the oozoordar's petition,) I see no reason for impugning the decree of the lower court, which is hereby affirmed, with all costs payable by appellant.

THE 16TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 23 of 1846.

Appeal from a decision of Baboo Nocoor Chunder Chowdry, Sudder Ameen of Bhaugulpore, dated the 26th of May 1846.

Bondee Sing, (Plaintiff,) Appellant,

versus

Damoodur Sing and others, (Defendants,) Respondents.

CLAIM for possession of a 12 annas share of mouza Boodham.
Action laid at 602 rupees.

This suit was instituted before the sudder ameen of Monghyr, on the 20th September 1845, and was, subsequently, transferred to Bhaugulpore on a sudder ameen being appointed there.

The petition of plaint set forth that, on the 15th of July 1845, the defendants (Damoodur Sing, Aghund Sing, Khedoo Sing, and Kunchun Sing) sold a 12 annas share of mouza Boodham to plaintiff, for 500 rupees, but would not give the latter possession of their purchase.

The defendants admitted the claim, when Babooram Munder came forward as *oozoordar* (or objector,) stating that on the 17th *Maug* 1256 F. S., Achumbhit Lall Mahta and Birj Lall sold a 4 annas share of the village to him for 900 rupees, and that, on 5th July 1844, Horil Sing and Rajun Sing sold an 8 annas share of the same to him for 2,819 rupees, thus constituting him (the objector) proprietor of 12 annas, which he holds in possession; that the remaining 4 annas was sold by Horil Sing to Sheosahoy Sing, (the son of Damoodur Sing,) for 1,500 rupees, and that the plaintiff and defendants have got up this suit collusively, in order to injure him (the objector.)

The sudder ameen remarked that, as the objector laid claim to a 12 annas share in the mouza also, and as it was clear from the copy of a proceeding held by the collector on the 25th October 1844, that disputes existed between the vendors (defendants) in the present case, and the objector, regarding the estate, the plaintiff ought to have included the latter among the defendants: he accordingly nonsuited the claim.

In appeal from this decision the plaintiff contends that, as the vendors admitted the sale, there was no necessity for him to sue the objector also.

This suit has certainly all the appearance of being a collusive one, for it is clear from the roobocaries of the collector's office, of which copies are filed on the record, that the objector is the recorded proprietor of a 12 annas share (as purchaser from Achumbhit Lall, &c.) and that, when the usual mutation of names was applied for by him, and notifications were issued in consequence, no one else came forward to claim the property. The sudder ameen's decision is perfectly right and proper, and it is hereby affirmed with costs against the appellants.

THE 17TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 25 of 1846.

Appeal from a decision of Baboo Nocoor Chunder Chowdhree, Sudder Ameen of Bhaugulpore, dated the 3d June 1846.

Sheik Peerun, (Defendant,) Appellant,

versus

Rughoobur Mundur, Jankee Mundur, and Beesoo Mundur, sons and heirs of Bhunjun Mundur, deceased, (Plaintiffs) Respondents.

CLAIM, rupees 191-12-6.

This suit was instituted, in the court of the moonsiff at Kishengunge, on the 5th September 1845, and, subsequently, transferred (with others) to the sudder ameen.

The plaint set forth that, on the 5th *Bhadoon* 1248 F., the defendant (appellant) borrowed from the father of plaintiffs (respondents) a sum of Sicca rupees 121, for which he executed a *teep* (or note of hand) stipulating to repay the amount, with interest, in *Bysakh* 1249 F., but failed to make good his promise.

Defendant, in his answer, admitted the borrowing of the money and execution of the *teep*, but pleaded payment in full at different times, according to separate receipts in his possession.

The sudder ameen, after taking evidence from both parties, disallowed the defendant's plea of payment, although supported by the evidence of three witnesses, for the following reasons:

Firstly. Because the defendants did not specify the *dates* on which the alleged payments were made in his answer, but withheld this information until his rejoinder was filed after the plaintiff's proofs had been given in.

Secondly. Because defendant's witnesses gave contradictory testimony in regard to the age of the original plaintiff Bhunjun Mundur, thereby shewing clearly that they never saw him.

Thirdly. Because all the four receipts, although written at different periods, were witnessed by the *same* individuals.

Fourthly. The statements of the defendant and of his witnesses are at variance in regard to the reasons assigned for the non-return, to the former, of the *teep*, by the plaintiff.

Fifthly. According to the evidence of defendant's witnesses, defendant paid *more* than was justly due by him, which the sudder ameen considered very strange and incredible.

Sixthly. The receipts appeared to have been written on new paper, and afterwards *intentionally* made to appear discoloured.

For these reasons, the sudder ameen decreed in plaintiff's favor for the full amount sued for.

The appellant has not shewn any sufficient ground to impugn the correctness of the decision of the lower court, which appears to be quite correct. The receipts produced by defendant are evidently fabricated; and even had they been genuine, they would not have availed him much, as they do not specify on account of *what transaction* the money was paid, and defendant himself admits that there were *other* bonds, besides the one which forms the subject of this suit. I, accordingly, dismiss the appeal with costs, affirming the sudder ameen's decision.

THE 17TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 26 of 1846.

Appeal from a decision of Moulvee Ali Buksh, Sudder Ameen of Monghyr, dated the 10th June 1846.

Sheo Sunker Singh, (Defendant,) Appellant,

versus

Musstn. Soorja, Mununda, Deoka, Radha, and Nuwul Coor,
(Plaintiffs,) Respondents.

CLAIM, Company's rupees 798-2-5.

This suit was instituted, on the 23d September 1845, by respondents, (as heirs of Jooramun Singh,) to get their names entered in the collector's registry as proprietors of certain jagheer lands, situate in mouzah Burhaia, pergunnah Sulleemabad.

The petition of plaint set forth that 40 beegahs, 5 cottahs, 8 dhoors of land in the above-named mouzah, were conferred upon Ram Bux Singh Sepoy, as jagheer, and enjoyed by him during his life, and, after his death, by his widow. That, when the latter died without heirs, the land was attached by the regulating officer of the invalid thannahs, who, on the 8th March 1831, made it over to Jooramun Singh (the plaintiff's ancestor) to make up a deficiency in his own jagheer; intimation of such transfer being duly made to the collector of Behar. That when pergunnah Sulleemabad was made over to the Monghyr collectorate, a permanent settlement of the land was concluded with Jooramun Singh, at a yearly jumma of rupees 20-2-11-4, on the 23d December 1833; but, owing to the name of Sheo Sunkur Singh defendant, having been entered in the canoongoe's serishta, as *cultivator*, while the land was under attachment, and to the canoongoe's papers having been transferred to the collector's office, the name of Sheo Sunkur got to be entered in the *kitaub tehseelee* (or book of collections,) and he enjoyed the produce of the land from the 9th Assin 1241 up to the year 1246 F. S., notwithstanding that plaintiff paid the Government revenue. That, from 1247 to 1261 F., the plaintiffs

gave a lease of the land to Sheopershad Singh and Ram Sahoy, malicks of mouzah Burhaia, according to which they have had possession ; but, in consequence of defendant's name being erroneously borne on the *kitaub tehseelee* (as above stated,) plaintiffs are necessitated to bring this action to get *their* names entered, as well as to obtain mesne profits from defendant for the period above mentioned.

The defendant states that his father Achil Singh was the son of Ram Sunkur Singh, own brother of Ram Bux Singh ; that, on the death of the latter, Achil Singh with Musst. Nowlassee, the *concubine wife* of Ram Bux Singh, succeeded to his estate, and, when Nowlassee demised, plaintiff's father got possession of the jagheer, until it was attached by Government ; that, from the time of settlement, Achil Singh paid the Government revenue ; that defendant has had possession, under the settlement with Achil Singh, and plaintiffs have nothing to do with the property.

The sudder ameen considered it to have been fully proved by the roobacary (or proceeding) of the regulating officer of the 8th March 1831, the pottah of settlement of the 23d December 1833, certain perwaannahs to the canoongoe, filed by plaintiffs, and the evidence of witnesses adduced by the latter, that the 40 beegahs, constituting the jagheer of Ram Bux Singh, (which defendant claims as his heir,) were attached in consequence of there being no heirs, and settled with Jooramun Singh, son of Gunsham Singh *comedhan*, ancestor of the plaintiffs, by order of the regulating officer, and that, from the time of settlement up to 1246 F. S., defendant made away with the produce. He accordingly passed a decree in plaintiff's favour for the registry of their names, and for mesne profits, to be adjusted when the decree should be carried into execution.

In appeal from this decision, the defendant pleads that his father Achil Singh, as the nephew of Ram Bux Singh, was the lawful heir of the latter, and that his name, and, after him, that of the defendant, was entered in the collector's books ; moreover, that plaintiffs admit the possession of Achil Singh and defendant up to 1246 F. ; that the roobacary of the regulating officer, alluded to, was held without his (defendant's) knowledge, and without enquiry ; that, on the 10th September 1833, a settlement was made for *these very* lands with Achil Singh, at a jummah of rupees 20-2-11-4, under the provisions of Regulation I. 1804, in proof of which he produced an authenticated copy of the *kubooleeut* executed by Achil Singh on that date, and an extract from the register of settlements (*intikhab bundobust*) of the Monghyr collectorate, in which the jagheer in question is entered as having been settled with Achil Singh, "*heir of Ram Bux Singh*," in 1241 F. S, which settlement was, subsequently, confirmed by the Sudder Board of Revenue on the 18th April 1836. The appellant further pleaded that the sudder ameen

had decided the case without calling upon the collector for a report on the above points.

In this case, both parties claim to hold the lands under settlements concluded with their respective ancestors by the collector : the plaintiffs founding their title upon a settlement made with their ancestor Jooramun Singh on the 23d December 1833, and the defendant resting his right of occupancy upon a settlement with his father Achil Singh (as heir of the original grantee) on the 10th of September 1833, and both parties produce documents in support of their respective claims. That of the plaintiffs being the original pottah bearing the seal of the collector's office and signature of the assistant deputy collector, while the defendant (in this court) has produced copies of Achil Singh's kubooleut and of the extract from the register of settlements, both attested by the seal and signature of the collector. Now, if these documents are genuine, it is clear that the *same land* has been settled *twice over* with different parties! and yet, the sudder ameen has made no enquiry from the collector to ascertain the real state of the case, but has taken the plaintiffs' story for granted, and decreed in their favour. Such a decision cannot be regarded as otherwise than incomplete and unsatisfactory, and it is, accordingly, hereby annulled, and the case remanded to the sudder ameen, in order that he may call upon the collector for a full report in regard to the settlement of the lands, stating to which of the two contending parties the right of occupancy belongs under the provisions of Regulation I. 1804; how it happened that two settlements were made; and, in the event of Achil Singh being the heir of Ram Bux Singh, why he was excluded, and the land assigned to another party. The sudder ameen will also take evidence from defendant in proof of his being the only surviving heir of Ram Bux Singh, and of his having held possession under the settlement concluded with the latter, and, after having ascertained the real facts of the case, pass a decision conformable to justice and to the regulations. The usual order for the refund of stamp duty, and adjustment of costs.

THE 19TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 175 of 1846.

Appeal from a decision of Seyud Humeedooddeen Ahamed, Moonsiff of Kishengunge, dated the 12th June 1846.

Jeo Loll Sing Jemadar, (Plaintiff,) Appellant,

versus

Bulkoo Mundur, son, and Bujrungee Mundur, grandson of Bhajee Das deceased, Respondent.

CLAIM, Company's rupees 49-4, principal and interest of a note of hand dated the 10th Sawun 1244 F. S.

This suit was brought by appellant (on 8th December 1845) for the recovery of Sicca rupees 23-0-2 pie, and an equal amount of interest, said to be due to him, under a *teep* (or note of hand) executed by Bhajee Das (deceased) *by the hands of Bulkoo Mundur* (his son) on account of rent to the year 1243 F. S.

Bulkoo Mundur denied having executed any such obligation, and Bujrungee Mundur pleaded ignorance of the transaction and non-liability.

The moonsiff dismissed the claim on the ground of two of the witnesses named by plaintiff having denied their attestation to the *teep*, and of the two who gave evidence in support of it being unworthy of credit; and the plaintiff appeals against this decision.

Although three witnesses on the part of plaintiff have deposed to the execution of the obligation in their presence, yet there is one circumstance which is fatal to plaintiff's suit *under that document*, viz. that the person in whose name it was written was not present at the time, and there is no evidence to show that he empowered his son to act for him in the matter. It is stated by the putwarree (Hunnooman Das) that both Bhajee Das and Bulkoo were in arrears of rent to plaintiff, and, if so, the latter is at liberty to bring a separate action for the recovery of any amount which his accounts may shew to be justly due from them on that account; but the present action, for the reasons above stated, cannot lie. The appeal is dismissed with costs, and the decision of the lower court upheld.

THE 20TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 27 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, Moulvee Ali Buksh Khan, dated the 20th of June 1846.

Roop Chund Bhuggut (Plaintiff,) Appellant,

versus

Mr. John Francis Caston, (Defendant,) Respondent.

CLAIM, Company's rupees 542-8, under a receipt, dated the 4th March 1845.

This suit was instituted, on the 29th November 1845, by the appellant, whose petition of plaint set forth that a certain Mrs. Thompson, having brought a suit against the defendant in the sudder ameen's court, the property of the latter was attached; when the plaintiff (appellant) came forward as his surety, in the amount of 1,101 rupees, for the release of the property in question; but, in consequence of the house which plaintiff pledged as security having been reported by the nazir to be worth less than the amount specified in the security bond, the deficiency, amounting to 500 rupees, was deposited by plaintiff in the sudder ameen's court, as per the nazir's receipt of the 4th March 1845. That, when Mrs.

Thompson obtained a decree for the amount of her claim, the defendant failed to make it good, and, in consequence, the plaintiff had to pay not only the 500 rupees deposited by him as above, but a further sum of rupees 597-8-3, under another receipt of the nazir bearing date the 27th August 1845, for the recovery of which he instituted a separate suit, also before the sudder ameen. The defendant, in his answer, without clearly admitting or denying the security transaction, pleaded payment to the plaintiff of 700 rupees in part of his claim, viz. 200 rupees on the 8th March 1845, under a receipt signed by plaintiff, and 500 rupees on the 11th September 1845, without any such voucher.

To this the plaintiff replied, that the item of 200 rupees alluded to by the defendant was paid to him, it is true, but *refunded again*, to the defendant; and that the other item of 500 rupees was received by the plaintiff from defendant in part payment of an account for hides, for the balance of which defendant had instituted a separate suit, which was then pending before the sudder ameen.

The sudder ameen, viewing the defendant's answer in the light of an admission in regard to the suretyship, proceeded to consider only the plea of payment advanced by him, which he deemed a valid one for the following reasons: Because plaintiff admitted having received the 700 rupees, and, although he pleads that 200 rupees of it were subsequently returned to defendant, yet the *repayment* constituted a distinct transaction, which could not form the subject of enquiry in this suit; and because plaintiff had failed to prove that the 500 rupees were paid to him in part of the price of hides, while defendant had shewn by his witnesses that the payment in question was on account of the security transaction. For these reasons, the sudder ameen gave the defendant credit, in this suit and the second one alluded to in the petition of plaint, for 700 rupees, with interest thereon, (amounting to 30-6-6,) and awarded the balance, rupees 425-8-6, to the plaintiff, in the other case, dismissing his claim in the present instance.

In appeal, the plaintiff contends that the deduction, by the lower court, of the 700 rupees from *this* claim, was unjust, and that the sudder ameen, instead of taking up the suit on account of the hides at the same time with the others, decided it separately on the 16th July 1846, nonsuited the claim.

JUDGMENT.

It is very clear from the evidence in this, and the two following cases, that the two items of 200 and 500 rupees, the receipt of which is admitted by plaintiff, were paid by the defendant in part of the plaintiff's claim under the security bond, and that the latter, with the view (apparently) of getting all the three suits tried in the court of the sudder ameen at Monghyr, where he (plaintiff)

resides, credited the 500 rupees in part of the claim for hides, &c. which would, otherwise, have exceeded 1000 rupees and been cognizable by the principal sudder ameen at Bhaugulpore. Under these circumstances, I see no reason for interfering with the decision of the lower court, which is hereby affirmed under the provisions of Regulation IX. 1831. According to the *strict letter* of the law, as explained by the Circular Order of the Sudder Court of the 11th January 1839, the plaintiff might have been nonsuited in this and the following suit for dividing his claim into two parts, but, as the defendant has not appealed, and no loss has occurred to Government in stamp duty, it is unnecessary to interfere on that point.

THE 20TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 28 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, dated 20th June 1846.

Roop Chund Bhuggut, (Plaintiff,) Appellant,
versus

Mr. John Francis Caston, (Defendant,) Respondent.

CLAIM, Company's rupees 613-7.

The circumstances of this case are similar to those described in the preceding one: the cause of action, the grounds of decision, and reasons of appeal being the same in both, the same orders are consequently applicable.

Appeal dismissed.

THE 20TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 34 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, Moulvee Ali Buksh, dated 16th July 1846.

Roop Chund Bhuggut, (Plaintiff,) Appellant,
versus

Mr. John Francis Caston, (Defendant,) Respondent.

CLAIM, rupees 478-2-6.

This case was instituted by plaintiff (appellant) on the 2d of February 1846, to recover from Mr. J. F. Caston (as heir of his father Mr. William Caston) the value of certain hides and horns, which, the plaintiff alleges, were entrusted by him to the said Mr. William Caston, to be sold in Calcutta; and which the latter (not being able to dispose of them) left with a Mr. Smith to be sold, when he returned to Monghyr, where he died shortly afterwards. The plaint went on to state that Mr. William Caston's effects were taken charge of by the Supreme Court, and that the hides in question were sold for rupees 918-6, which, together with the

proceeds of the other property, was received by defendant, who has only paid 500 rupees of the amount to plaintiff, who brings this action for the balance calculated as follows.

Sale proceeds of the hides, &c.,	Rupees	918	0	6
Interest thereon,		82	10	0

Total,.....	1,000	10	6
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Deduct,

Cash paid by defendant in part,	500	0
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Interest thereon,	22	8
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522	8	0
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Remains due,.....	478	2	6
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Defendant, in answer, pleads that the 500 rupees, alluded to by plaintiff, were paid in part of the security transaction, (alluded to in Case No. 27,) and denies having received any money belonging to plaintiff from the Supreme Court.

The sudder ameen, finding it proved by the evidence adduced in this and the two preceding cases that the 500 rupees referred to had been paid by defendant in part of the debt due by the latter to plaintiff on account of the suretyship, which forms the subject of Case No. 27, was of opinion that this claim, which amounts to upward of 1,000 rupees, (if the 500 rupees be not deducted from it) was not cognizable by his court, and that the petition of plaintiff had been engrossed on a stamp of inferior value; and he, accordingly, nonsuited the claim for this irregularity.

The decision recorded in Case No. 27 being applicable to this one also, the appeal is dismissed, and the decision of the lower court affirmed.

THE 23D NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 30 of 1846.

Appeal from a decision of Moulvee Ali Buksh Khan, Sudder Ameen of Monghyr, dated 24th June 1846.

Hunnooman Misser and others, (Defendants,) Appellants,
versus

Deriao Singh and Madhoo Singh, (Plaintiffs,) Respondents.

CLAIM, Company's rupees 351-9-1, value of grain, &c.

This is a suit for the recovery, from the defendants (appellants,) of the balance due by them to plaintiffs (respondents,) for grain, supplied by the latter between the 3d and the 13th of Aughun 1252 F. S.

The defendants deny having received any grain from the plaintiffs at the time mentioned, and allege that the suit has been falsely got up, but they assign no reason for such a proceeding on the part of plaintiff.

The sudder ameen, finding the claim to be proved by the evidence of five witnesses, before whom the grain was weighed and delivered to defendants, decreed in plaintiffs' favor, remarking in his decision that, in such transactions, it is not customary for parties in the mofussil to execute written obligations, and that, if such obligations were to be required by the courts in every case, much inconvenience would arise.

In appeal, the defendants found their objections entirely on the circumstance of no written instrument having been filed by plaintiffs.

I see no reason to discredit the testimony of the plaintiffs' witnesses, which sufficiently proves the transaction. The defendants have not shewn that they were at enmity with the plaintiffs, nor have they assigned any reason why the latter should have brought a false action against them: of the three witnesses brought forward by defendants to prove that they never took any grain from plaintiffs, one is a *kundoo*, another a *dhanook*, and the third a *gowalah*, and their evidence has been fully met by that of Chetoo Loll, *arhuteea* (or broker,) who deposed that the defendants were in the habit of taking grain from plaintiffs and disposing of it again. Under these circumstances, I see no reason for interfering with the decision of the lower court, which is hereby confirmed. •

THE 26TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 31 of 1846.

Appeal from a decision of Moulvee Ali Buksh Khan, Sudder Ameen of Monghyr, dated the 24th June 1846.

Alif Khan, (Defendant,) Appellant,

versus

Musst. Jassoo and others, (Plaintiffs,) Respondents.

CLAIM, rupees 583-5-2, value of 824 mangoe, taur, and other trees, *ryottee* share.

This suit was instituted by the respondents on the 24th July 1845. The plaint set forth that their ancestor Doobree Sahoo, on the 15th May 1843, purchased from one Ruhmoo Sahoo 19 beegahs 7 cottahs and 12 dhoors of land, with the trees growing thereon, for 847 rupees; that he gave a lease of the *taur* trees to one Nirmul Passge, who paid the rent (*hissa hakimee*) to Doobree Sahoo, and, after his death, to plaintiffs: notwithstanding which, the defendant, with a view of dispossessing plaintiffs, brought an action under Act IV. 1840 in the foudaree court, and obtained an award in his favour for the *ryottee* share of the trees, to set aside which this suit is instituted.

The defendant answered that the land purchased by plaintiffs' ancestor originally belonged to Sheik Fazil, in whose time the defendant's ancestors Domtin Khan, &c., lived thereon, and planted certain trees (mangoe, jack, date, &c.,) in their own compound, the

landlord's dues (*hissa hakimee*) of which were paid to Sheikh Fazil, and his successors; the *ryottee* share being enjoyed by defendant himself. That, when plaintiffs' ancestor Doobree Sahoo became the purchaser, he sold the produce of the trees to one Maunoollah Koonjera, (with the view of dispossessing defendant,) who obtained a decree for 64 rupees from the moonsiff, which, however, was reversed in appeal. That he then instituted a suit, in the name of Nirmul Passee, under Act IV. 1840, which was decreed in defendant's favour.

Munsha Passee (also a defendant) admitted the plaintiffs' claim, and said that the trees had been leased out to him by Alif Khan, with the understanding that the latter would pay the costs if any one molested him.

Nirmul Passee admitted plaintiffs' claim also.

The sudder ameen was of opinion that defendant had entirely failed to prove his right, *as ryott*, to any trees except those growing on 1 beega 6 cottahs which are not included in plaintiffs' claim; he, accordingly, decreed in favor of the latter, setting aside the award of the foudaree court.

There is no doubt that the plaintiffs, as heirs of Doobree Sahoo, are entitled to the rights and interests which the latter purchased in the land, and the defendant allows that they are entitled to the *hissa hakimee* of the trees in question; (he claims for himself only the *ryottee* share on the grounds of their having been planted by his ancestors, and of the former proprietors having only taken their dues as proprietors.) Under such circumstances the sudder ameen ought to have ascertained by local enquiry *when* and by whom the trees were planted, and who has been in the receipt of the *ryottee* share since that time; also whether any of the former proprietors, previous to Doobree Sahoo, ever received it. The case is accordingly remanded, in order that these omissions may be supplied, and the case re-investigated. The usual order for the refund of stamp duty, &c.

THE 26TH NOVEMBER 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 32 of 1846.

Appeal from a decision of Moulvee Ali Buksh Khan, Sudder Ameen of Monghyr, dated 24th June 1846.

Alif Khan (Defendant,) Appellant,

versus

Maunoollah Koonjera, (Plaintiff,) Respondent.

CLAIM, 64 rupees, value of jack fruit.

The decision of the lower court in this case having been based upon the one given in the preceding number, the same orders are applicable to both.

ZILLAH EAST BURDWAN.

THE 2D NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

NO. 122.

Appeal from the decision of Gopal Chunder Ghose, Moonsiff of Bhuttoorriah, dated 30th March 1846.

Bhyrub Chunder Chuckerbutty and others, (Plaintiffs,) Appellants,

versus

Mr. J. A. Gregg and others, (Defendants,) Respondents.

JUDGMENT.

THIS suit was instituted before the moonsiff to set aside an award of the collector under Regulation VII. 1799, in which the plaintiffs sued for rent of some land gained by the drying up of a jheel. The suit of plaintiffs was dismissed by the collector, on the grounds that the plaintiffs had no title whatever to the land in dispute. The moonsiff also dismissed the case on trial on the same grounds as the collector, and from this decision of the moonsiff the plaintiffs now appeal. The plaintiffs and appellants file in this case a kubooleut executed and granted by Mr. J. A. Gregg, the respondent, to the appellants, engaging to pay to the appellants, the rent amounting to rupees 21-14 annas per annum; and Mr. Gregg received from the appellants a pottah for seven years for this very land. The kubooleut given by Mr. Gregg is not called in question by any of the parties; and in virtue of his engagement to the appellants, it appears to me that they are entitled to receive the rent agreed upon by respondent, Mr. J. A. Gregg. Leaving therefore the claims of others to a proprietary share of the land in question to be adjusted in a civil suit, should they be desirous of preferring one, I set aside the moonsiff's decision and decree the appeal in favor of the plaintiffs and appellants, with costs and interest to be paid by Mr. J. A. Gregg, respondent.

THE 2D NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 159.

Appeal from the decision of Saadut Hossein, Moonsiff of Khund Ghose, dated the 12th May 1846.

Kisto Chunder Roy, (Plaintiff,) Appellant,

versus

Ram Soonder Sircar, (Defendant,) Respondent.

JUDGMENT.

THE plaintiff sued the defendant in the moonsiff's court to recover rupees 15, annas 15, gundahs 15, (principal, interest, and costs,) on account rent, and to set aside a decree of the revenue authorities under Regulation V. of 1812.

The moonsiff decreed in favor of plaintiff for four rupees; the defendant having produced a receipt in proof of payment of rupees five, and the remaining sum being the amount of interest and costs of suits in the collector's and moonsiff's courts. The only point in dispute is the validity of the receipt filed by the defendant for five rupees, and which the moonsiff admitted as a genuine receipt of rent. In my opinion the dakhilah is not a valid one, for the gomashthah, Khoodeeram Chuckerbutty, whose signature it bears, declares he never granted the receipt at all, nor was the rent ever paid by the defendant, respondent. Under these circumstances I amend the moonsiff's decision, and decree the appeal in favor of the appellant for the full amount claimed.

THE 3D NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 160.

Appeal from the decision of Saadut Hossein, Moonsiff of Khund Ghose, dated the 6th May 1846.

Muhabbhut Dutt and others, (Defendants,) Appellants,

versus

Sreeram Mookerjee, (Plaintiff,) Respondent.

JUDGMENT.

THE plaintiff in this case, sued for arrears of rent, amounting to rupees 42, annas 2, gundahs 11, cowree 1, which the moonsiff decreed to the plaintiff. The only point for consideration in this appeal is the assertion of the defendants that they had paid the full amount of the rent, with the exception of rupees 4 for the year 1250 B. S. The defendants and appellants have failed entirely

to produce any proof of the payments they state to have made, notwithstanding the moonsiff frequently required them to produce it; and in this court none has been given. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 3D NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 173.

*Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan,
dated the 20th May 1846.*

Byjnath Singh, (Plaintiff,) Appellant,

versus

Gooroo Churn Singh and others, (Defendants,) Respondents.

JUDGMENT.

THE plaintiff sought in this case to set aside an award passed by the magistrate under Act IV. of 1840, and instituted the suit before the moonsiff for the possession of a purchit, or wall enclosure, and its lands, valued at 5 rupees, which the plaintiff stated he had purchased from one Kunhye Koondho. The defendants also declare their having bought the same purchit from Kunhye Koondho. In virtue of the deed of sale produced by the defendants, in which the sale of the purchit in question to the defendants is distinctly laid down, and is dated two years before the deed produced by the appellant and plaintiff, and in which no mention whatever is made of the sale of this purchit to the plaintiff, appellant, the moonsiff gave a decree in favor of the defendants, dismissing the plaintiff's suit. Under these circumstances I can see no reason whatever to disturb the moonsiff's judgment, which is accordingly affirmed.

THE 3D NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 184.

**Appeal from the decision of Moulvee Ali Hyder, Moonsiff of
Bamunara, dated the 26th May 1846.*

Ballonam Day and others, (Defendants,) Appellants,

versus

Koodeeram Roy, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was preferred by plaintiff for a share of one anna and 12 gundahs in a tank valued at rupees 75-8-5, which the moonsiff decreed in favor of the plaintiff for one anna, 6 gundahs, 2 cowries and 2 kraunths share. In the proceedings held before the moonsiff, the plaintiff produced a kubala which clearly shews his purchase of the share: but it appeared that two of the sharers of the tank were, at the time of the plaintiff's purchase, minors, and their guardians

and coparceners had disposed of the minors' shares without any authority. The plaintiff and respondent was also proved to have been in possession of the share he bought for upwards of twenty years, and some of the sharers themselves admit the fact of the respondent's purchase. The moonsiff very properly refused to recognise the validity of the sale of the minors' shares, and gave a decree for one, of one anna, 6 gundahs, 2 cowries, and 2 kraunths, keeping the minors' right of 5 gundahs, 1 cowrie, and 1 kraunth undisturbed by his decree. As I can see no reason to interfere with the moonsiff's judgment, it is upheld, and the appeal dismissed.

THE 5TH NOVEMBER 1846.

PRESENT : A. SMELT, JUDGE.

No. 188.

Appeal from the decision of Sreekunth Singh, Moonsiff of Samunter, dated 29th May 1846.

Juggo Mohun Koor, (Defendant,) Appellant,
versus

Ramdhun Hajrah, (Plaintiff,) Respondent.

JUDGMENT.

THE plaintiff in this case sues to recover arrears of rent for 1251 B. S., amounting to rupees 26, 15 annas, 10 gundahs, 2 cowrees, and 2 krants, with interest, which the moonsiff decreed in favor of the plaintiff. The appellant states his name to be Jugurnath Koor and not Juggo Mohun, and this is the only point to be enquired into. In the petition of appeal the appellant signs himself as Juggo Mohun Koor, and on examination of the accounts for the years 1248, 1249, and 1250, shews that this appellant paid the rent for three years as Juggo Mohun Koor, and the gomashatahs state that Juggo Mohun is the appellant's true and proper name. The moonsiff's decision is confirmed and the appeal dismissed.

THE 5TH NOVEMBER 1846.

PRESENT : A. SMELT, JUDGE.

No. 189.

Appeal from the decision of Sreekunth Sing, Moonsiff of Samunter, dated the 8th June 1846.

Juggo Mohun Koor, (Defendant,) Appellant,
versus

Ramdhun Hajrah, (Plaintiff,) Respondent. *

JUDGMENT.

THIS suit was instituted for the recovery of arrears of rent for 1252 B. S., and is precisely of the same nature as the appeal No. 188, decided this day, and the same decision is applicable to this case.

THE 5TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 190.

Appeal from the decision of Sreekunth Singh, Moonsiff of Samuntee, dated the 26th May 1846.

Muheis Chunder Kuberaj, (Defendant,) Appellant,

versus

Bundeh Ali Khan, (Plaintiff,) Respondent.

JUDGMENT.

THE plaintiff sued in this case to recover from the defendant 30 rupees, advanced to him in loan, which the moonsiff decreed in favor of the plaintiff. Although there was no bond or promissory note given by the defendant, appellant, yet it was distinctly proved by witnesses before the moonsiff that the plaintiff, respondent, lent to the appellant the sum claimed, without any specification or mention of interest. As the demand against the appellant is a just and correct one, I uphold the moonsiff's decision, and dismiss the appeal.

THE 5TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 196.

Appeal from the decision of Pearree Mohun Bannerjee, Moonsiff of Kytee, dated the 5th June 1846.

Nuffer Chunder Mundul, (Plaintiff,) Appellant,

versus

Saadut Mundul, (Defendant,) Respondent.

JUDGMENT.

THIS suit was instituted to recover the amount of a bond for 50 rupees, with interest, (18 rupees,) amounting in the aggregate to rupees 68.

The moonsiff dismissed the plaint in consequence of the defendant's witnesses deposing that the bond, on which recovery of the money was sued for, was not the bond granted by the defendant, respondent, to the plaintiff, appellant, and that enmity existed at the time between the parties. From this judgment I differ, as the bond has been fully and satisfactorily attested by the subscribing witnesses to the deed in question, and I see no grounds whatever to lead me to believe that the demand is a fraudulent one. I therefore set aside the moonsiff's decision, and decree the appeal.

THE 9TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 201.

Appeal from the decision of Gholam Pyumber, Moonsiff of Mungulcote, dated the 4th June 1846.

Jadoo Bindo Mundul, (Defendant,) Appellant,

versus

Manmohinee Dossee, for self and Sooroodhunee Dossee, her sister,
a minor, (Plaintiffs,) Respondents.

JUDGMENT.

THIS suit was preferred for the recovery of some hereditary property situated in mouzahs Birmapore, &c., which the moonsiff decided in the plaintiff's favor. The circumstances of the case are briefly these. At the time of the death of Cheeneebas, the proprietor of the property, he left a wife, Itchamuhee, and two daughters, the plaintiffs and respondents, by his second wife, who died before him; and as Itchamuhee, by whom Cheeneebas had no issue, relinquished all claim to the property, the plaintiffs and respondents were declared by the pundit to be the legal heirs of Cheeneebas. The defendant and appellant Jadoo Bindo Mundul laid claim to the property in dispute, alleging that he had purchased the same from Cheeneebas: his claim was disallowed in a miscellaneous suit, and the sale declared invalid; he then instituted a regular suit for the same, which was dismissed, and in which he acknowledges to have held possession of the property for four years. As the right to the disputed land was clearly proved to belong to the plaintiffs, respondents, the moonsiff gave his judgment accordingly, with wasilaut and interest; and as there is no reason whatever to interfere with the moonsiff's decision, I uphold and confirm it.

THE 9TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 202.

Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan, dated the 5th June 1846.

Sheikh Baboo Jan and others, (Plaintiffs,) Appellants,

versus

Kajeh Surwur Hosein, (Defendant,) Respondent.

JUDGMENT.

THIS case was preferred for the possession of a fishery, which the plaintiffs alleged they held under a mocurreree pottah granted by the ancestors of the defendant, respondent; but neither before the moonsiff nor in this court have they been able to produce any such document; whilst the counterpart of it, the kuboolyut, most distinctly shews the pottah was only given for fifteen years.

Under this consideration the moonsiff dismissed the plaint, as the period for which the pottah was granted had expired. This is the only point for enquiry in the appeal, and it so clearly is apparent that the moonsiff's decision is quite correct, I confirm it.

THE 10TH NOVEMBER 1846. -

PRESENT: A. SMELT, JUDGE.

No. 203.

*Appeal from the decision of Moulwee Ali Hyder, Moonsiff of
Bamunara, dated the 6th June 1846.*

Aradhun Roy and others, (Plaintiffs,) Appellants,

versus

Soobul Chunder Roy and others, (Defendants,) Respondents.

JUDGMENT.

IN this case the plaintiffs sought to recover possession of 22 beegahs, 5 cottahs of juma land, to which they assert they are entitled, being a four annas juma share of mouzah Casseepore. The amount of the suit is laid at 63 rupees. The moonsiff dismissed the plaintiffs' suit; from which judgment they now appeal.

From the proceedings held before the moonsiff, who has entered most fully into the merits of the case, it appears that whatever right the plaintiffs, appellants, had to the share in question, the talookdar transferred, in 1225 B. S., to the defendants, respondents, who have been in possession ever since, and regularly paid the rents. Besides which, the appellants have failed to shew that they now possess any title to the lands, and admit in their plaint that a putnee bundobust was made with Nuffer Chunder and others, respondents, in the year 1225 B. S. To the best of my judgment the moonsiff's decision is quite correct, and I accordingly uphold it.

THE 10TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 224.

*Appeal from the decision of Nazirooddeen Mahomed, Moonsiff of
Culna, dated the 23rd June 1846.*

Doobraj Singh, (Defendant,) Appellant,

versus

Nubin Chund Mooluck, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was preferred to recover rupees 149-12-10g., the amount of a bond with interest, which the moonsiff decreed in favor of the plaintiff.

The bond has been duly proved by the subscribing witnesses, and it is not pretended by the appellant that he has paid any part of the debt. I therefore uphold the moonsiff's decision, which is quite correct.

THE 12TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 6.

Appeal from the decision of Moulvee Fuzul Rubbee, Sudder Ameen of Burdwan, dated 28th August 1845.

Ramkishore Mookerjee, Pauper, (Plaintiff,) Appellant,

versus

Munee Kurneeka and others, (Defendants,) Respondents.

JUDGMENT.

THIS case was instituted in the sudder ameen's court to set aside an award under Act IV. of 1840. The circumstances of the case are briefly these. The plaintiff, appellant, states that one Kunuck Munee, ancestor of the defendant, respondent, Munee Kurneeka, gave to him by hibbeh the property in dispute. The validity or otherwise of the hibbeh is the only essential point to be enquired, for on this alone the case rests. The sudder ameen in his decree disallows the validity of this deed, and I think most correctly. It bears the attestation of six witnesses, of whom three are dead, one did not attend the sudder ameen's court; one only was examined, and the remaining one the plaintiff was afraid to produce, as he had gone over to the defendants' side. The one examined deposes to the execution of the hibbeh, but his evidence is very suspicious; for at the expiration of eighteen or twenty years, he says he recollects such circumstances as are quite incredible. The hibbeh-nameh is to my judgment also very suspicious, for it bears evident marks of fresh writing upon it; and moreover if Kunuck Munee had really given over by hibbeh all claim to the plaintiff, appellant, in 1231 B. S., in which year the deed is alleged to have been executed, what necessity could have existed for Kunuck Munee, the granter of the hibbeh, to complain in the foudarry court in 1840 or 1247 B. S., against the plaintiff, for forcible dispossession of what she had (as alleged) voluntarily made over to him by hibbeh-nameh in 1231 B. S.? The sudder ameen dismissed the case, and, after giving to the appeal every consideration, I see no reason whatsoever to disturb his judgment, and accordingly uphold it.

THE 12TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 7.

Appeal from the decision of Mahomed Saem, Sudder Ameen of Burdwan, dated the 29th August 1846.

Bindrabun Chunder Baboo, (Plaintiff,) Appellant,

versus

Khaitoo Beebee, (Defendant,) Respondent.

JUDGMENT.

THIS case was preferred before the sudder ameen to recover the sum of rupees 718-7-6, the amount of a bond debt with interest. The bond is dated the 30th Assin 1232 B. S., corresponding with the year 1826 A. D., and the amount of the original debt is stated in it to be rupees 501. The sudder ameen dismissed the plaint, not considering the bond valid or the evidence adduced in support of the suit worthy of credit, or the plaint filed within the time prescribed by law. In this finding I fully concur, for the bond itself shews beyond all doubt that it has been altered, and some words and names of witnesses written in fresh ink over the former writing. I accordingly dismiss the appeal.

THE 16TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 204.

Appeal from the decision of Saadut Hosein, Moonsiff of Khund Ghose, dated the 13th June 1846.

Ram Kunai Bhattacharj, (Defendant,) Appellant,

versus

Dirpo Mye Dibbeh, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was preferred before the moonsiff for the recovery of possession of a house and one cottah of land, valued at Company's rupees 32. The plaintiff, respondent, states she inherited this house and land from her mother, who inherited the same from her father, and having proved this before the moonsiff, he took a bywasteh from the pundit, to ascertain if the plaintiff was legally entitled to the property under the Hindoo law. The pundit having given it as his opinion that the plaintiff was the legal heir to the property, the moonsiff decreed the case in her favor. The defendant, appellant, has been unable to adduce any thing to shake the plaintiff's right, and seeing no reason whatever to disturb the moonsiff's judgment, I accordingly uphold it, and dismiss the appeal.

THE 16TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 213.

Appeal from the decision of Illahee Buksh, Moonsiff of Cutwah, dated the 2nd July 1846.

Ruttun Muneew Bewah, (Plaintiff,) Appellant,

versus

Kidar Nath Chowdree and others, (Defendants,) Respondents.

JUDGMENT.

THIS suit was preferred to set aside a sale under Regulation V. of 1812. The plaintiff stated that she held no lands whatsoever, and that in consequence the plaint of Kidar Nath and others, defendants and respondents, was a false one, and the sale of her property in liquidation of such a demand of rent against her was unjust and illegal. In the proceedings held before the moonsiff it was clearly proved that she held a jote for three years, i. e. from 1249 to 1251 B. S. and executed a kuboolyut agreeing to pay the rent specified in the pottah she had received from the respondents, and from the enquiries made by the ameen, under the directions of the moonsiff, it was clearly shewn that she was in possession of the land. The moonsiff consequently dismissed the suit, and as his decision appears to be perfectly correct, I confirm it, and dismiss the appeal.

THE 17TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 214.

Appeal from the decision of Illahee Buksh, Moonsiff of Cutwa, dated 19th June 1846.

Haroo Muneew Debia, (Defendant,) Appellant,

versus

Doorga Muneew Debia, (Plaintiff,) Respondent.

JUDGMENT.

THE parties in this case are sisters, and inherit some landed property from their father. The defendant, appellant, having dispossessed her sister of her share of the property, the plaintiff, respondent, instituted a suit against the defendant in the year 1241 B. S., and in 1242 she obtained a decree against her sister, and recovered possession of the property in the year 1244 B. S., and this case the plaintiff instituted for the recovery of the wasilaut during the time she was dispossessed, i. e. from 1240 B. S. to 1243 B. S. inclusive. There can be no doubt that the plaintiff, respondent, is entitled to a moiety of the profits as decreed by the moonsiff, but in

calculating the same, the moonsiff has not in my opinion come to a correct decision, for he has only taken the evidence of three witnesses, and according to their statement, without any enquiry at all, he has assumed the profits of the lands in question, whereas to my judgment a more satisfactory conclusion would have been formed by deputing an ameen to make local enquiries as to the real profits; and for this purpose I return the case to the moonsiff, who will cause a more strict investigation into the amount of profits realized during the time of the plaintiff's dispossession, and the appeal is consequently decreed.

THE 17TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 216.

*Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan,
dated the 29th June 1846.*

Radha Mohun Sircar, (Plaintiff,) Appellant,

versus

Doolub Mundul, (Defendant,) Respondent.

JUDGMENT.

THIS case was brought before the town moonsiff to fix the rent of the defendant's holding, consisting of 1 beegah, 18 cottahs, and 1 chittack of land, which the moonsiff judged to be at the rate of 14 annas 2 gundahs per beegah. From this decision the plaintiff has appealed, as he deems the rates too low.

In the absence of a pottah and its counterpart, the only reasonable way of fixing a proper rate is from ascertaining that of similar land in its neighbourhood, and this the moonsiff has done, and after a careful enquiry into the merits of the case has given his judgment for 14 annas 2 gundahs per beegah. From this finding I see no reason to differ, and therefore uphold it, dismissing the appeal.

THE 17TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 223.

*Appeal from the decision of Sreekunth Singh, Moonsiff of Samuntee,
dated 23d June 1846.*

Chundee Churn Singh, (Defendant,) Appellant,

versus

Sursuttee Dasseea, (Plaintiff,) Respondent.

JUDGMENT.

THIS case was preferred before the moonsiff for the recovery of surplus rent, which the defendant had taken forcibly from the plain-

tiff, respondent. The moonsiff gave his judgment in favor of the plaintiff, without adverting at all to the time allowed by the Regulations, within which such penal damages are cognizable, which is fixed by Regulation II. 1800, Section 7, at one year after the cause of action shall have arisen. This is stated to be in the years 1248 and 1249 B. S., whereas the plaint was only preferred in the year 1252. Under these circumstances the moonsiff's decision must be set aside and the appeal decreed.

THE 18TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 235.

Appeal from the decision of Gopal Chund Ghose, Moonsiff of Bhattoorea, dated the 30th June 1846.

Ram Mohun Ghose and others, (Defendants,) Appellants,
versus

Gopee Mohun Bundopadya, (Plaintiff,) Respondent.

JUDGMENT.

THIS case was instituted for the recovery of a bond debt, amounting with interest to 30 rupees. The debt having been satisfactorily proved and the bond duly attested by the evidence of subscribing witnesses, the moonsiff decreed the suit in favor of the plaintiff. From this decision I see no reason whatever to differ, and accordingly uphold it, dismissing the appeal.

THE 19TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 239.

Appeal from the decision of Moulvee Ali Hyder, Moonsiff of Bamunara, dated the 29th June 1846.

Bissessur Shaha, (Defendant,) Appellant,
versus

Dirpoo Mye Dassea, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was instituted for the recovery of a bond debt, amounting, with interest, to rupees 33-14 annas, which the moonsiff decreed in the plaintiff's favor. The defendant denies the debt altogether, and states that at the date of the bond in 1248 B. S., he was not of age. The subscribing witnesses to the bond attest the defendant's, appellant's, signature to the same, and in the proofs brought forward by the plaintiff, respondent, it is clearly shewn that at the time of contracting the debt and signing the bond, the defendant, appellant, was of full age, and even for some time before the transaction. Under these circumstances, there can be no grounds to disturb the moonsiff's decision, which is accordingly confirmed, dismissing the appeal.

THE 24TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No 14.

Original Suit for the recovery of a Debt.

Guddadhur Pershad Tewarry, (Plaintiff,)

*versus*Mooftie Lootf Hosein, late Principal Sudder Ameen of Burdwan,
(Defendant.)

THIS suit was preferred by Guddadhur Tewarry, who states in his plaint that the defendant, through his servant, borrowed from him 700 rupees, which he sent by his own servants to the principal sudder ameen, on the 2d Poos 1252 B. S. The defendant states that he never borrowed any money from the plaintiff, that he does not know him, and that it is quite unusual to borrow from a man of whom he knows nothing, and that he, the defendant, had decided two cases against the plaintiff, who entertains enmity towards him, and who actually lodged a complaint against him, the defendant, through some of his creatures, which was dismissed by the then judge of this district. The plaintiff in his answer to the defendant, states that the money was advanced to the principal sudder ameen to defray the medical charges incurred on account of his wife's illness, who had come to Burdwan for her recovery. The plaintiff's witnesses state certainly that the money was sent to the defendant's house, who sent back by plaintiff's servants a verbal message with his sulam, and that he had received the amount, whilst those of the defendant fully prove that, at the time of this alleged debt being contracted, the defendant's wife was in her own house, ten or twelve coss distant, and had never come at all at the time stated to Burdwan. On a careful consideration of the circumstances of this case, it seems to be most extraordinary that the defendant should send to borrow money from a person, of whom he knew nothing, without giving his messenger some written paper to show that the person, who went to borrow it, was really and truly deputed by him for the purpose; that the plaintiff should under such circumstances send the money asked for, and even after delivery of the money, not ask for any receipt, any bond, or any acknowledgment of the debt. The only entry of the debt is in the plaintiff's "juma khurch" book. This entry is made by the plaintiff, and is not signed by the defendant, nor even by the person who went for the money. I consider therefore that the plaintiff has not proved his case, and dismiss the plaint, and all costs to be defrayed by the plaintiff.

THE 25TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 240.

Appeal from the decision of Pearree Mohun Banerjee, Moonsiff of Kytee, dated 7th July 1846.

Gunganarain Mookerjee and others, (Plaintiffs,) Appellants,
versus

Purikheet Koond and others, (Defendants,) Respondents.

JUDGMENT.

THIS suit was instituted before the moonsiff to recover the amount of a bond for fifty rupees, payable by instalments, amounting in the aggregate with interest to rupees fifty two and six annas; which the moonsiff dismissed, not deeming the evidence adduced by the plaintiff deserving of credit, and suspecting the hand-writing on the bond and on the defendants' vukalutnameh to be different. From the moonsiff's judgment in this case, I must differ, for in the first place, the bond appears to me to be a valid document, and in the second, I see no reason whatever to suspect the statements of the subscribing witnesses, and in the third, the hand-writing on the bond and on the vukalutnameh are quite like each other. Under these circumstances I set aside the moonsiff's decision, and decree the appeal.

THE 25TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 259.

Appeal from the decision of Dubeerooddeen Mohomed, Moonsiff of Madpore, dated 27th July 1846.

Doorga Pershad Udheekaree, (Defendant,) Appellant,

versus

Kalla Chand Bidaruthno, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was preferred for the recovery of a bond debt, amounting with interest to rupees 83-10, which the moonsiff decreed in favor of the plaintiff. It appears to me, that this case must be re-sent to the moonsiff for re-investigation. The notices to the defendant were not served upon him, nor could they be, for he was residing in Calcutta, and had left his house some time before the institution of this suit, and having had no opportunity of defending his case, I return it for re-trial.

THE 26TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 271.

Appeal from the decision of Moonshee Dubeerooddeen Mohomed, Moonsiff of Madpore, dated the 30th July 1846.

Kumlakunt Dutt, (Defendant,) Appellant,

versus

Taramunee, (Plaintiff,) Respondent.

JUDGMENT.

THIS case was instituted to recover the value of paddy, estimated at Rupees 63, 10 annas, 3 gundahs, 3 cowries, which the moonsiff decreed in favor of the plaintiff; and from this decision the defendant now appeals.

From the proceedings held in the case it appears that the moonsiff omitted to require from the defendant, appellant, any proof in refutation of the plaintiff's demand against him; and as it is highly necessary that the moonsiff should call upon the defendant, appellant, for any evidence he may have to adduce, the case is referred back to him for this purpose.

THE 26TH NOVEMBER 1846.

PRESENT: A. SMELT, JUDGE.

No. 272.

Appeal from the decision of Dubeerooddeen Mahomed, Moonsiff of Madpore, dated 27th July 1846.

Kumlakunt Dutt, (Defendant,) Appellant,

versus

Ram Chunder Sawunt, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was instituted to recover from the defendant a bond debt, amounting with interest to rupees 140, 9 annas, and 5 gundahs, which amount the moonsiff decreed in favor of the plaintiff, respondent. The validity of the bond having been duly proved by subscribing witnesses, and no payment in liquidation of any portion of the debt having been made, I see no reason whatever to disturb the moonsiff's decision, which is accordingly confirmed, and the appeal dismissed.

ZILLAH WEST BURDWAN.

THE 2D NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

CASE No. 409 of 1845.

Appeal from the decision of Kazee Nazeruddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Buddun Chowdrec, (Defendant,) Appellant,

versus

Rampershaud Ghosaul, (Plaintiff,) Respondent.

It is evident from the petition of plaintiff that defendant borrowed from plaintiff on a bond, dated 12th Srabun 1251, rupees 99. Defendant has paid at different times 9 rupees. The balance being still due, plaintiff sues him for the same, with interest, amounting to rupees 106, 1 anna. Buddun Chowdree, defendant, in answer acknowledges borrowing the money and executing the bond, but further states he has paid at different times to plaintiff several sums, leaving a balance due to him of 47 rupees, 8 annas, when a fresh bond was executed; the old bond, having been lost, was not returned, but the whole sum of rupees 47, annas 8, has been repaid, and the new bond was returned to me, and it is stated on the back of it that the former bond had been lost, &c. &c.

The moonsiff of Indoss decreed the claim. Defendant appeals. Having taken into consideration the proceedings and the evidence and bond adduced by appellant, pending the appeal, I am of opinion that the decision of the moonsiff is correct, because the evidence and the deed are not entitled to credit. The appeal is therefore dismissed, and the decision of the lower court affirmed, with costs payable by appellant.

THE 2D NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

CASE No. 437 of 1845.

Appeal from the decision of Baboo Tarrakishen Holdar, Moonsiff of Aosgaon, Zillah West Burdwan.

Chundermohun Odheecary, (Defendant,) Appellant,

versus

Ramkonye Banerjee, (Plaintiff,) Respondent.

It appears from the petition of plaintiff that Kishenmohun Odheecary, father of defendant, had dealings in grain with plaintiff, and, on comparing accounts on the 2d Jheit 1244, he was found

indebted to plaintiff for 8 maps 6 sullees of rice, and subsequently up to the 25th Sawon of the same year defendant borrowed a quantity of rice, making a total of 13 maps. It was agreed that a profit thereon should be paid of 5 seers of rice per sallee—5 rupees have been paid: the balance being still due I sue for the same, with interest, amounting to 29 rupees, 10 annas, 10 gundahs, but I have no documents in proof of my claim.

Defendant, Chundermohun Odheecary, in his answer acknowledges that his father borrowed from plaintiff 13 maps of rice, but states the whole has been repaid at different times in grain and cash, &c.

The moonsiff of Aoosgaon passed judgment in favour of plaintiff's claim for the original cost of the rice, but he did not decree the profit thereon. Defendant appeals. Having taken into consideration the evidence and proceedings in this suit, I am of opinion that the decision of the moonsiff is improper and must be reversed, because if there had been former dealings between respondent and appellant's father an account book or account current would be in existence, but respondent, although notice was issued in his name, has failed to produce any account, neither has he appeared himself or through his vakeel pending this appeal; and if it was true that the defendant, appellant, was indebted to respondent for rice, he would not have allowed 8 years to elapse before he brought his suit for the same. I therefore decree the appeal, and reverse the decision of the lower court: costs of suit in both courts are payable by respondent.

THE 2D NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 454 of 1845.

Appeal from the decision of Baboo Tarrakishen Holdar, Moonsiff of Aoosgaon, Zillah West Burdwan.

Sreenebas Mihturee, (Plaintiff,) Appellant,

versus

Sreenebas Dey Kamar, (Defendant,) Respondent.

PLAINTIFF sues defendant on a bond, dated 22d Maugh 1247, for 12 rupees. The amount was to be paid in Cartick 1248. No part of the sum due having been repaid he brings his action for the same, amounting with interest to 19 rupees, 3 annas, 4 gundahs.

Defendant acknowledges executing the bond, but denies having received any money from plaintiff: the bond was for articles made, &c. I have paid the amount with interest at different times to Kishenchund Mihturee, the son of plaintiff, &c. &c.

The moonsiff of Aoosgaon dismissed the claim. Plaintiff appeals from the decision. On consideration of the proceedings and evidence

of the several witnesses and the khata book produced by appellant pending the appeal, I am of opinion that the decision of the lower court is improper and must be set aside, because the answer of the defendant that he has paid the amount due is not in any respect proved. One witness only was adduced in proof of the repayment, and the date on which he states the amount to have been refunded does not tally with the answer of the defendant: the evidence is therefore not entitled to credit. Plaintiff's witnesses moreover clearly prove that 12 rupees in cash were paid to defendant and that he duly executed the bond. The appeal is therefore decreed, and the decision of the lower court is reversed, and plaintiff, appellant, will obtain from the defendant, respondent, in accordance with the petition of plaintiff, 19 rupees, 3 annas, 4 gundahs, with interest on the original sum 12 rupees, from date of plaintiff to this date, 2 rupees, 6 annas, 5 gundahs, being a total of 21 rupees, 9 annas, 9 gundahs, and costs of suit in both courts, with interest to date of payment.

THE 10TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 5 of 1846.

Appeal from the decision of Rae Chunder Seekur Chowdry, Principal Sudder Ameen of West Burdwan.

Nundkishore Roy, and others, (Defendants,) Appellants,

versus

Punchanund Biswas, (Plaintiff,) Respondent.

PLAINTIFF, respondent, states that lot Cheitungunge, Nej Cheitungunge, is his rent paying talook; within this talook there is a tank named Gotait Pokur, for which rent has always been paid—the defendants, appellants, have taken possession of the same by force on the plea that it is rent free property. I prefer my claim for possession thereon, with mesne profits from 1243 to 1248, laying my action at rupees 145.

Gooroochurn Singh Fotedar, defendant, says in answer that the tank under dispute was the hereditary rent free property of Nundkishore Roy and others, from whom he purchased it on the 24th Pous 1249, and subsequently enlarged it, &c. &c.

Nundkishore Roy and others, defendants, reply to the same effect.

The principal sudder ameen passed judgment in favour of the claim on the grounds that it was proved the tank was mal or rent paying, and that a rent of 2 rupees had formerly been paid for it.

Gooroochurn Singh Fotedar, Nundkishore Roy, and others, defendants, prefer this appeal. On persual of the evidence and pro-

ceedings in this suit, I consider the decision of the lower court to be an erroneous one, and that it must be reversed. The documentary evidence adduced is of no importance: the decision therefore depends entirely on the evidence adduced by both parties, and although plaintiffs', respondents' witnesses depose to the tank being rent paying, yet none of them assert that they have seen rent paid to the proprietor of lot Cheitungunge, and unless it is satisfactorily proved that the tank is included in lot Cheitungunge, plaintiff, respondent, is not entitled to rent for the same. The evidence adduced on the part of the appellants, defendants, that they have held the tank for a series of years as lakhraj, is entitled to much greater credit: they prove satisfactorily that defendants, Nundkishore Roy and others, and subsequently Gooroochurn Singh Fotedar, were in possession thereof without paying rent to any one. Plaintiff, respondent, having therefore in my opinion failed to prove his claim, the appeal is decreed, and the decision of the principal sudder ameen is reversed, and the suit of plaintiff, respondent, is dismissed: costs of suit in both courts are payable by plaintiff, respondent.

THE 12TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 13 of 1846.

Appeal from the decision of Roy Chunder Seekur Chowdry, Principal Sudder Ameen of West Burdwan.

Rammohun Banerjee, (Plaintiff,) Appellant,
versus

Radha Laul Dhoba, on his death Juggessuree Babee, and Nuffer Sainee and others, (Defendants,) Respondents.

PLAINTIFF, appellant, states that he is the putnee talookdar of lot Ghaut Joy Bellia. The defendants, Nuffer Sainee and others, have by degrees within ten or eleven years cleared 50 beegahs of land, belonging to the above lot from jungle and brought it into cultivation. I demanded rent from them, but they refused to pay it, pleading that the land was rent free. I therefore sue for possession of my rights in the land and for rent for 1249, laying my action at rupees 695.

Nuffer Sainee and three others, defendants, in their answer state that 35 beegahs of the disputed land is situated in mouzah Mukundpoor, lot Altapatra-Bandha, and belongs to Radha Laul Dhoba, which they hold at a fixed rent of 5 rupees, 4 annas: it has been under cultivation for many years. The remaining land, they assert, is their rent free deottur property and is included in mouzah Baramassia. Plaintiff, appellant has no interest in the land, &c. &c.

Radha Laul Dhoba, talookdar of mouzah Mukundpoor, replies to the same effect as Nuffur Sainee and others, defendants.

The principal sudder ameen dismissed the plaint, because it appeared from the proceedings that three sides of the disputed land were the lands of mouzah Baramassia which had been resumed by the deputy collector, and the claim of plaintiff, appellant, thereto had been rejected, and on the fourth side 35 beegahs of land had been decreed in suit No. 61 to Radha Laul Dhoba as belonging to mouzah Mukundpoor: under the above circumstances he did not see how plaintiff could be entitled to any land therein as belonging to lot Ghaut Joy Bellia, Jungle Mehals. He was of opinion moreover that defendants, respondents, had proved the objections urged by them, and therefore he dismissed the suit.

Plaintiff prefers this appeal; but on consideration of the proceedings and evidence on both sides and documents, I am of opinion that the decision of the principal sudder ameen is correct, because plaintiff, appellant, has failed in every respect to prove his claim. I do not see any grounds therefore for either modifying or reversing it. The appeal is therefore dismissed, and the decision of the lower court affirmed, with costs of appeal payable by appellant.

THE 13TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 61 of 1846.

Appeal from the decision of Baboo Ramtunnnoo Roy, Moonsiff of Burjorah, Zillah West Burdwan.

Nundcomar Sircar, (Plaintiff,) Appellant,

versus

Mohun Mull, and others, (Defendants,) Respondents.

PLAINTIFF states that mouzah Runecara *alias* Kulia Madhubpoor, in pergunnah Barhazaree, was resumed by Government. Ranee Chooramonee entered into a full engagement for half of the mouzah, and the other half the Ranee took on a conditional lease, and I took half thereof from the Ranee in putnee, and the other half on a farming lease. Within that half of the mouzah which was resumed, in case No. 544, in the measurement papers Dag No. 91, there are 220 beegahs of jungle, and the defendants have cut down and removed from the 16th Pous to Maugh 1251, about 2000 saul trees. I sue them therefore for the value thereof, laying my claim at 31 rupees, 4 annas.

Obotar Mull and others, defendants, in their answer state that the land under dispute is part of their ghutwalee rights in Ghaut Mujooru—it does not belong to mouzah Kulia Madhubpoor, &c. &c.

Gopaul Laul Panra, claimant, says the land is included in his talook lot Oolay, &c. &c.

The moonsiff of Burjorah dismissed the claim, because plaintiff did not sue for his rights in the land, but claimed merely the value

of the trees cut down and taken away,—he also considered that the latter point had not been proved. Plaintiff prefers this appeal. On perusal of the evidence on the part of appellant, and the measurement papers and reports of the ameen deputed to make a local enquiry pending the appeal, I am of opinion that the decision of the lower court is an improper one, and that it is liable to be upset because it is evident from the ameen's report that in the resumption suit No. 544, the land was measured under Dag No. 91, and the ghutwals, defendants, did not prefer their claim to it; and from the report of the mohafiz dufter of the magistrate's court, dated 7th July 1829, copy of which has been produced by appellant, it appears that the claim of the defendants to this land as being ghutwalee was rejected because an engagement for the same had been made with Government. It is quite clear therefore that the jungle in dispute has been included in the resumed land of mouzah Runeeara, and it is proved by the evidence of Dhurm Doss, Moorroolee, and Puteet Mundle, that the defendants, Budee Mohun and Nobin Mull, cut down and took away from 1000 to 1500 small trees, the value of which they estimate at 1 pice each. It is proper therefore that these three defendants should pay for 1250 trees at the above rate, equal to rupees 198 annas, 10 gundahs, and plaintiff, appellant, is entitled to the same from them. Since it is quite clear that an engagement has been entered into with Government for the jungle in dispute, no order appears necessary in respect to the claim of the claimant. The appeal is therefore decreed, and the decision of the lower court reversed, and plaintiff, appellant, will obtain from the three defendants above mentioned 19 rupees, 8 annas, 10 gundahs from this date, and costs of suit in both courts in proportion to the amount decreed, with interest to date of payment: claimant and respondents are to pay their own expences.

THE 16TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 179 of 1846.

Appeal from the decision of Baboo Ramtunnnoo Roy, Moonsiff of Burjorah, Zillah West Burdwan.

Manick Rukheet, (Defendant,) Appellant,

versus

Khitab Mundle, (Plaintiff,) Respondent.

THE petition of plaint states that plaintiff carried into execution a decree No. 91, against Sadhoochurn Pureeal, and attached and sold 4 beegahs of his jummaee land in Math Patreeasal, and 1 beegah of his rent free land, which plaintiff himself purchased, the former for 25 rupees, 2 annas, and the latter for 5 rupees, 4 annas, and obtained a deed of sale and possession. Afterwards Manick

Rukheet, defendant, agreed to rent the land from plaintiff for one year at 10 rupees, 8 annas, and he entered into an engagement with plaintiff to the following effect: that as Kalechurn Bhuttacharj was indebted to him, Manick Rukheet, 8 rupees, 8 annas should be deducted from the rent on that account, and 2 rupees should be paid to me, plaintiff, and that he would give up the land at the end of the year. Defendant, Manick, paid me the 2 rupees rent accordingly, but in 1252 when I, plaintiff, went to take possession of the land, defendant dispossessed me therefrom. I sue therefore for possession, with mesue profits, laying my action at 63 rupees, 6 annas.

Kalechurn Bhuttacharj, defendant, in his answer says that 4 beegahs of the disputed land is his lakraj property. Sadhoochurn Pureal is my ryott, and Manick Rukheet, defendant, rented the land from Sadhoochurn. I borrowed some money from Manick Rukheet and executed an instalment bond in his favour, and the amount has been realized from the rent of the land. Sadhoochurn Pureal never resigned the land, &c. &c.

Sadhoochurn Pureal, defendant, replies to the same effect as Kalechurn. He further states that 1 beegah of the land is his rent free property, and plaintiff in the execution of his decree against me purchased it himself. Manick Rukheet rented the land from me. I never resigned the land, &c. &c.

Manick Rukheet, defendant, in his reply states the 5 beegahs of land to be the rent free property of Kalechurn Bhuttacharj, it was the jummaee land of Sadhoochurn Pureal—from the time of my father we took the land from Sadhoochurn at the rent of 7 rupees, 8 annas, and paid him rent up to 1244, when he gave it up, and I took it in pottah from Kalechurn Bhuttacharj. Kalechurn and Sadhoochurn were indebted to me, and they executed an agreement in my favour for this land, and I accordingly received the rent up to 1248. In 1249, Raja Sunkernerain, the zemindar, stating the land to be rent paying gave it to me in pottah at the annual rent of 7 rupees, 8 annas, and I am accordingly in possession.

Raja Sunkernarain, defendant, replies partly to the same effect as plaintiff, and partly as Manick Rukheet, defendant. He states further that he ascertained in 1249, that 4 beegahs of the land was rent paying, and that Kalechurn Bhuttacharj was illēgally in possession thereof, and he gave it on pottah therefore to Manick Rukheet in 1249, for 2 years at the rent of 5 rupees, and received rent for the same from him, &c. &c.

The moonsiff of Burjorah decreed the claim of plaintiff on the ground that he had purchased the disputed land at auction as the rights of Sadhoochurn Pureal, and because it had not been proved that he had given it up: he was of opinion moreover that it was proved, Manick Rukheet, defendant, had given the ikrar to plaintiff.

Defendant, Manick, appeals from this decision, and plaintiff, respondent appeared without being summoned through his vakeels. On consideration of the evidence and documents in this case I deem the decision of the lower court correct, because it is evident that the defendant, Manick, in the execution of the decree No. 91, claimed the disputed land, but his claim was rejected, and the rights of Sadhoochurn were ordered to be sold, and plaintiff himself purchased it. If the land did not belong to Sadhoochurn, then the defendant, appellant, Manick, can sue to reverse the sale, but he cannot oust the plaintiff, respondent, from the disputed land, as it is proved he has done in this case. The decision of the moonsiff is therefore affirmed.

THE 17TH NOVEMBER 1846.

PRESENT: F. DEEDES, JUDGE.

Case No. 7 of 1846.

Appeal from the decision of W. Luke, Esq., Collector of East Burdwan, under Regulation II. of 1819.

Musummat Bolakee, Coomaree Dibia, and others, (Plaintiffs,)

Appellants,

versus

Sagur Dutt, (Defendant,) Respondent.

PLAINTIFFS preferred this suit before the collector of East Burdwan, under Section 30, Regulation II. of 1819, to resume 5 beegahs, 8½ chatacks of land, situated in mouzah Mullickpore, illegally held as rent-free by the defendant: laying their action at 460 rupees, 14 annas.

Defendant, Sagur Dutt, says in reply the land in dispute is his rent-free property and that his original deeds were lost in the floods of 1230: when appeal case No. 151 was pending, plaintiffs gave him a chhar chitthee, or deed of relinquishment of this land, &c. &c.

The collector of East Burdwan dismissed the suit because he considered the chhar produced by respondent to be entitled to credit, and there was no proof adduced on the part of the plaintiffs, appellants, that they had received rent for this land.

Plaintiffs prefer this appeal. On perusal of the evidence and consideration of the proceedings in this suit, I deem the decision of the collector to be incorrect, because there is no proof on the record that plaintiffs, appellants, gave the chhar chitthee to the defendant, and when the deed (chhar) is said to have been given, a suit No. 151 to determine the rent to be fixed on the disputed land was pending in appeal: had it therefore been given, the chhar would have been produced by the defendant in that suit. It appears moreover that in a suit No. 194, decided by the moonsiff of Potnah, he considered the chhar chitthee as not entitled to credit. Not a single witness

besides has been brought forward by the respondent in proof of his having held the land as rent-free : the objections urged by him therefore in this respect cannot be relied upon. Plaintiffs', appellants', witnesses moreover satisfactorily prove that the defendant, Sagur Dutt, has held the land as rent paying, and paid rent for the same for many years. The appeal is consequently decreed, and the decision of the collector of East Burdwan is reversed, and the land is resumable and liable to pay rent. Costs of suit in both courts are payable by respondent, defendant.

THE 17TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 14 of 1846.

Appeal from the decision of Roy Chunder Seekur Chowdree, Principal Sudder Ameen of West Burdwan.

Gunganarain Singh and others, (Defendants), Appellants,

versus

Rammohun Banerjee, (Plaintiff), Respondent.

THE petition of plaint states that in mouzahs Mandeea, Bindrabunpore, and Gopaul Bera, within lot Senaputtee Mehal, the putnee talook of plaintiff, the defendants hold 263 beegahs of land at a punchukee jumma of Sicca rupees 22-8 annas, the rent whereof has been paid to the former talookdars of the lot. Defendants pleaded falsely that the land was their rent free punchukee muhuteran property, and have not paid rent thereon from the last six months of 1244. Plaintiff sues therefore for his rights in the land as rent paying, and for enquiry as to the right of the defendants to hold the lands as punchukee rent free : laying his action at rupees 776-6 annas.

Gunganarain Singh and others, defendants, reply that the land under dispute is not included in the Senaputtee Mahal, it is our punchukee rent free muhuteran property : this will appear from decrees of court and a decision of the special commissioner. The summary suit of plaintiff was struck off the file, and this plaint cannot now be listened to, &c. &c.

The principal sudder ameen passed a decree in favor of plaintiff to a punchukee rent yearly from Gunganarain and Radhanath Singh, defendants, of Sicca rupees 22-8 annas, or Company's rupees 24, and that he was entitled to the same with interest from the year 1244.

Gunganarain and Radhanath being dissatisfied prefer this appeal. Having perused the proceedings and documentary evidence I consider the decision of the lower court to be correct : because it is clear and the defendants acknowledge that there is a punchukee rent of Sicca rupees 22, annas 8, fixed on this land, but

they plead that plaintiff is not entitled to the rent, and therefore they did not pay it to him, but they state at the same time that they do not know who is entitled thereto. In my opinion it is clear from the proceedings that plaintiff, respondent, is entitled to the rent of this land as the proprietor of the Senaputtee Mehal, and there is no doubt that former talookdars of the mehal received it; and besides plaintiff, respondent, no body else has preferred a claim thereto. Seeing therefore no grounds for either modifying or reversing the decision of the lower court, the decree is therefore affirmed under Clause 3, Section 16, Regulation V. of 1831.

THE 18TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 15 of 1846.

*Appeal from the decision of Roy Chunder Seekur Chowdhree,
Principal Sudder Ameen of West Burdwan.*

Beer Sing Baboo, (Defendant,) Appellant,

versus

Srcekanth Benoorjee, (Plaintiff,) Respondent.

It appears from the petition of plaint that mouzas Haradang and Gram Pushkunee were the rent-free lands of Neemaye Sing, who gave them under a deed of gift to Muggun Koomaree, the mother of Kishengovind Sing. On her death Kishengovind was in possession. Plaintiff executed a decree No. 250 against Kishengovind Sing, and attached and sold his half share in the mouzas, plaintiff himself purchasing the share at auction and obtaining a deed of sale and possession. As the mouzas had been resumed and a settlement made with Beer Sing Baboo for the same at a half rent, plaintiff petitioned the collector for a mutation of names, but his petition was rejected. As it is evident from decrees of court that Kishengovind Sing was the proprietor of the mouzas, plaintiff sues for a mutation of name in the collector's office and for possession with mesne profits, laying his action at 620 rupees, 6 annas, 14 gundahs, 14 cowrees.

The Wakeel of Government in his answer states that the mouzas in dispute were resumed and Beer Sing Baboo entered into an engagement for the same for ten years:—if plaintiff prove his right thereto in the civil court, the Government have no objection to a mutation of name in the collector's office, &c. &c.

Beer Sing Baboo, defendant, replies that the mouzas alluded to are his hereditary deotur property. The statements of plaintiff that they were given to Muggun Koomaree, the mother of Kishengovind Sing, is not true. Plaintiff has no interest in them: when they were resumed in suit No. 3, I entered into an engagement for the lands, and no claim was preferred thereto, &c. &c.

The principal sudder ameen passed judgment in favor of the claim of plaintiff in accordance with decrees of court Nos. 14002 and 33, and other documents produced, pending the proceedings.

Beer Sing Baboo, defendant, prefers this appeal. I consider the decision of the lower court to be correct and proper, because it appears from the decree No. 14002, in which Khetoo Mundle was plaintiff, and Beer Sing Baboo, Kishengovind Sing and others were defendants, that Beer Sing urged the same objections in that case as he has done in this suit: they were considered futile and rejected: the rights of Kishengovind Sing being proved, no appeal was preferred from that decision, which is therefore final. The decision of the principal sudder ameen is therefore affirmed under Clause 3, Section 16, Regulation V. of 1831.

THE 19TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 451 of 1846.

Appeal from the decision of Kazeer Nazurooddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Rambullub Ghose, (Plaintiff,) Respondent.

THE plaintiff's case is this—that he holds in mouzah Sooree Pushkunee 2 beegahs, 12 kuttahs of land at the rent of 2 rupees, 9 annas, 5 gundahs, which he cultivated with rice in 1251; and the defendant, Muddosoodun Sircar, stating that his servant, Sree Bharut Ghose, defendant, held the mouzah in pottah, and that Haradhun Doss, defendant, was his ryot, attached the crop under Regulation V. of 1812, through an ameen, and with the assistance of the police the crop was cut and made over to the charge of Bhugeerut Sana and others, and afterwards taken away to the house of the defendant, Muddosoodun Sircar, and sold: plaintiff claimed the crop, but the ameen rejected his claim. He therefore sues for the value thereof, laying his action at 15 rupees, 9 annas.

Muddosoodun Sircar, defendant, in reply denies that Sree Bharut Ghose is his servant, and also that he attached plaintiff's crop under Regulation V. He further states that he has no interest in the suit brought by plaintiff, &c. &c.

Defendant, Sree Bharut Ghose, states in his defence that he did not attach the crops of plaintiff's rent paying land: he says he has taken in pottah from the talookdar Sreenath Singh, the whole of mouzah Sooree Pushkunee, at the rent of rupees 391, and cultivates the land through his ryots. My ryot, Haradhun Doss, has a jumma in the mouzah of 195 rupees: being in arrears, I attached and sold his crop under Regulation V. of 1812, and obtained 16 rupees,

9 annas, 16 gundahs, from the sale thereof. Plaintiff did not urge any objections thereto before the collector. Sreenath Singh, the talookdar, stating that I was a ryot of his in mouzah Sooree Pushkune, attached my crops under Regulation V. in November 1844; I paid the amount due, and my crops were released, &c. &c.

Bhugeerut Sana and others, defendants, reply to the same effect as plaintiff.

The moonsiff of Indoss passed judgment in favour of plaintiff's claim against Muddosoodun Sircar, Sree Bharut Ghose, and Haradhun Doss, defendants. Muddosoodun Sircar alone appeals. The grounds of his appeal are these, that he did not attach plaintiff's crops under Regulation V. of 1812; but on consideration of the evidence I am of opinion that it is satisfactorily proved that appellant, Muddosoodun Sircar, fraudulently caused the attachment and sale of plaintiff's crops under Regulation V. of 1812, through Sree Bharut Ghose, defendant. It is in evidence moreover that after the crops were cut they were taken to the house of the defendant, Muddosoodun Sircar. Seeing therefore no reason for disturbing the decision of the lower court, the appeal is dismissed, and the decision of the moonsiff affirmed, with costs of appeal payable by appellant.

THE 20TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 201 of 1846.

Appeal from the decision of Kazee Nazeroodeen Mahomed, Moon-siff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Ramgopal Sircar and Kishenmohun Sircar, (Plaintiffs,) Respondents.

PLAINTIFFS state that in mouzah Sooree Pushkune, in the name of me, plaintiff Ramgholam, there are 10 beegahs of land at the rent of 14 rupees, 15 gundahs, and we both have in the mouzah, 1 beegah, 15 cottahs of deottur land. In 1251, the land was sown with rice, and defendant, Muddosoodun Sircar, stating that his servant, Sree Bharut Ghose, held the mouzah in pottah, and that Haradhun Doss was his ryot, caused the attachment of the crops of 9 beegahs of this land under Regulation V. of 1812, which were cut down and removed to the house of the defendant, Muddosoodun, and afterwards sold. We sue for the value thereof, laying our claim at 63 rupees, 13 annas, and for damages to the same amount.

Defendant, Muddosoodun Sircar, appeared through his vakeel, but did not put in any reply.

The moonsiff of Indoss decreed the claim for 51 rupees, 6 annas, with damages to the same amount, against defendants, Muddosoodun Sircar, Sree Bharut Ghose and Haradhun Doss. Muddosoodun Sircar, appellant, alone appeals; but on consideration of the proceedings in this suit I see no reason for either modifying or reversing the decree of the lower court, because it is satisfactorily proved that defendant, Muddosoodun Sircar, fraudulently caused the attachment and sale under Regulation V. of 1812 of plaintiff's crops through his servant, Sree Bharut Ghose. The appeal is therefore dismissed, and the decision of the lower court affirmed, with costs of appeal payable by appellant.

THE 20TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

CASE NO. 198 OF 1846.

Appeal from the decision of Kazee Nazurooddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Nuffer Roy, (Plaintiff,) Respondent.

THIS suit is of a similar nature to appeal case No. 201, decided this day, with this exception that the plaintiff is different, and the quantity of land held by him in mouzah Sooree Pushkurnee is 6 beegahs, 15 kuttahs, at the rent of 7 rupees, and he states that Muddosoodun Sircar and others, defendants, illegally distrained and sold the crops thereof under Regulation V. of 1812: he therefore sues for the value thereof, 30 rupees, 15 annas, with damages to the same amount.

Defendant, Muddosoodun Sircar, denies plaintiff's claim, and further states that he has no interest in the suit, &c. &c.

The moonsiff of Indoss decreed the claim for 24 rupees, 1 anna, with damages to the same amount and costs of suit against Muddosoodun Sircar, Sree Bharut Ghose, and Haradhun Doss, defendants. Muddosoodun, defendant, alone appeals, but on the same grounds as are stated in appeal No. 201, decided this day, this appeal is also dismissed, and the decision of the lower court affirmed, with costs of appeal payable by appellant.

THE 20TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 199 of 1846.

Appeal from the decision of Kazee Nazurooddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Gudadhur Bagdee, (Plaintiff,) Respondent.

THIS case is of a similar nature to appeal No. 201, decided this day, with this exception that the plaintiff is different, and the quantity of land held by him in mouzah Sooree Pushkurnee is 2 beeghas, at the rent of 2 rupees, 9 annas, 10 gundahs, and he states that Muddosoodun Sircar and others, defendants, illegally distrained and sold the crops thereof in 1251, under Regulation V. of 1812: he therefore sues for the value thereof, 15 rupees, 11 annas, with damages to the same amount.

Defendant, Muddosoodun Sircar, denies the plaintiff's claim, &c. &c.

The moonsiff of Indoss decreed the claim for 11 rupees, 6 annas, 10 gundahs, with damages to the same amount, and costs of suit, against Muddosoodun Sircar, Sree Bharut Ghose, and Haradhun Doss, defendants. Muddosoodun, appellant, prefers this appeal, but on the same grounds as are stated in appeal No. 201, decided this day, this appeal is also dismissed, and the decision of the lower court is affirmed, with costs of appeal payable by appellant.

THE 20TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 200 of 1846.

Appeal from the decision of Kazee Nazeroodeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Kishenmohun Sircar, (Plaintiff,) Respondent.

PLAINTIFF states he holds 13 beegahs of land in mouzah By-kauntpoor, at the rent of 14 rupees, 6 annas, which he cultivated with rice in 1251: defendant, Muddosoodun Sircar, on the plea that Sree Bharut Ghose held the mouzah in pottah, and Chedam Bagdee was the ryot of the land, caused the attachment under Regulation V. of 1812 of the crops of 3 beegahs, 7 kuttahs of this land, and notwithstanding that I preferred my claim thereto before the ameen, yet no attention was paid to it: then my nephew, Gopeenath

Sircar, petitioned the collector on the subject, and was referred to the civil court: the entire crop of rice of the 3 beegahs, 7 kuttahs of land was cut down and sold by Muddosoodun Sircar and the other defendants. I therefore sue them for the value thereof, laying my action at 31 rupees, 4 annas.

Romonauth Mozemdar, defendant, denies plaintiff's claim, and states he is a mokurrureedar, and holds a 4 annas share in the mouzah above-mentioned: I have brought a suit against plaintiff for arrears of rent, &c. &c.

Juggutchund Gossain, defendant, denies the claim and says he has a 12 annas share in the rent-free land of mouzah Bykauntpoor—Sree Bharut Ghose has not obtained the mouzah in pottah, &c.

Muddosoodun Sircar, defendant, states he is gomastah on the part of the proprietor of mouzah Bykauntpoor: plaintiff was a ryot therein, and in arrears, and I was about to attach his crops under Regulation V., which he ascertained, and fraudulently preferred, through his son-in-law, Sree Bharut Ghose, a summary suit under Regulation V. against Chedam Bagdee: I sued plaintiff for arrears of rent in case No. 371: if his crops had been injured, he would have mentioned it in that suit: I preferred a suit for debt against plaintiff and his nephew Gopeenath Sircar, and obtained a decree in my favour: this suit has consequently been brought from enmity, &c. &c.

The moonsiff of Indoss decreed the suit for 20 rupees, 11 annas, 10 gundahs, with damages to the same amount, and costs, against defendants, Muddosoodun Sircar, Sree Bharut Ghose, and Chedam Bagdee, Muddosoodun, appellant, alone appeals from the decision; and after due consideration of the proceedings I deem the decree to be incorrect and that it must be modified, because plaintiff sued merely for the value of his crops and the moonsiff adjudged damages also—this is improper—plaintiff is not entitled to damages which he did not sue for. The appeal is therefore dismissed, and the decision of the lower court as above modified is affirmed, *i. e.* plaintiff, respondent, in accordance with the moonsiff's decree is entitled to obtain from the defendants, Muddosoodun Sircar, Sree Bharut Ghose, and Chedam Bagdee, 20 rupees, 11 annas, 10 gundahs, the value of the crops taken away, and costs of suit in both courts in proportion to the amount decreed, with interest to date of payment.

THE 24TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 202 of 1846.

Appeal from the decision of Kazee Nuzurooddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Ramgopal Sircar, (Plaintiff,) Respondent.

THIS suit is similar to appeal case No. 200, decided on the 20th November. There is merely this difference that the name of plaintiff and the quantity of land is not the same. Plaintiff in this suit states he holds in mouzah Bykauntpoor 2 beegahs, 9 kuttahs of land, the crops of which in 1251 were illegally distrained and sold under Regulation V. by Muddosoodun Sircar and others, defendants. I sue them therefore for the value thereof, laying my claim at 15 rupees, 15 gundahs.

Defendant, Muddosoodun Sircar, in his reply denies having caused the attachment of plaintiff's crops—he further states he is gomastah of mouzah Bykauntpoor and preferred summary suits for arrears of rent against some of the ryots of the mouzah under Regulation VII. of 1799, &c. &c.

The moonsiff of Indoss decreed the claim for 13 rupees, 5 annas, 18 gundahs, with damages to the same amount, and costs of suit, against defendants, Muddosoodun Sircar, Sree Bharut Ghose, and Chedam Bagdee. Muddosoodun Sircar alone appeals, and I am of opinion after consideration of the proceedings that the decision of the lower court must be modified, because plaintiff merely sued for the value of the crops taken away: the moonsiff has adjudged damages also—this is improper—plaintiff is not entitled to damages for which he did not sue. The appeal is therefore dismissed, and the decision of the moonsiff as above modified is affirmed, i. e. plaintiff is entitled to obtain from the date of the moonsiff's decree from the defendants, Muddosoodun Sircar, Sree Bharut Ghose, and Chedam Bagdee, 13 rupees, 5 annas, 18 gundahs, the value of the crops taken away, with costs of suit in both courts in proportion to the amount decreed, with interest to date of payment.

THE 24TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 206 of 1846.

Appeal from the decision of Kazeer Nazurooddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Gopeenath Sircar, (Plaintiff,) Respondent.

THIS suit is of a similar nature to No. 200, decided in appeal on the 20th November. Plaintiff sues Muddosoodun Sircar, and others, defendants, for the value of crops illegally distrained and sold under Regulation V. of 1812, laying his action at 63 rupees, 6 annas, 9 gundahs, and for damages to the same amount.

Muddosoodun Sircar, defendant, denies plaintiff's claim, &c. &c.

The moonsiff of Indoss decreed the claim for 44 rupees, 11 annas, and also damages to the same amount, against defendants. Muddosoodun Sircar appeals from the decision, but after perusal of the papers I consider the decision of the lower court to be correct, and do not perceive any grounds for either reversing or modifying it. The appeal is therefore dismissed, and the decision of the moonsiff affirmed, with costs of appeal payable by appellant.

THE 24TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 207 of 1846.

Appeal from the decision of Kazeer Nazurooddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Roopchurn Bagdee, (Plaintiff,) Respondent.

THIS suit is of a similar nature to No. 200, decided in appeal on the 20th November. Plaintiff sues Muddosoodun Sircar and others, defendants, for the value of crops illegally distrained and sold under Regulation V. of 1812, laying his action at 14 rupees, 5 annas, 2 gundahs, 2 cowrees, and for damages to the same amount.

Muddosoodun Sircar, defendant, denies the claim of plaintiff, &c. &c.

The moonsiff of Indoss decrees the claim against defendants, Muddosoodun Sircar and others, for 11 rupees, 1 anna, 10 gundahs, and damages to the same amount. Defendant, Muddosoodun Sircar, appeals from the decision, but after perusal of the papers I consider the decision of the lower court to be correct, and do not perceive any grounds for either modifying or reversing it. The appeal is

therefore dismissed, and the decision of the moonsiff affirmed, with costs of appeal payable by appellant.

THE 24TH NOVEMBER 1846.

PRESENT: E. DEEDES, JUDGE.

Case No. 208 of 1846.

Appeal from the decision of Kazee Nuzurooddeen Mahomed, Moonsiff of Indoss, Zillah West Burdwan.

Muddosoodun Sircar, (Defendant,) Appellant,

versus

Kishenmohun Sircar, (Plaintiff,) Respondent.

THIS suit is of a similar nature to case No. 200, decided in appeal on the 20th November. Plaintiff sues Muddosoodun Sircar and others, defendants, for the value of crops illegally distrained and sold under Regulation V. of 1812, laying his action at 63 rupees, 13 annas, 6 gundas, and for damages to the same amount. Muddosoodun Sircar, defendant, denies plaintiff's claim, &c. &c.

The moonsiff of Indoss decreed the claim for 50 rupees, 15 annas, 10 gundas, with damages to the same amount, against Muddosoodun Sircar and others, defendants. Muddosoodun appeals from the decision, but after perusal of the record I am of opinion that the decision of the moonsiff is correct, and that there are no grounds for either modifying or reversing it. The appeal is consequently dismissed, and the decision of the lower court affirmed, with costs of appeal payable by appellant.

THE 26TH NOVEMBER 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 425 of 1846.

Appeal from the decision of Moulovee Abdool Uzeez, Moonsiff of Ourdah, Zillah West Burdwan.

Rammohun Banerjee, (Plaintiff,) Appellant,

versus

Puddolochun Roy and others, Ghutwals, (Defendants,) Respondents.

Sadoo Khan, Gasee Khan, and others, Claimants.

PLAINTIFF states lot Boolunpoor to be his purchased putnee talook: included therein are mouzahs Harmasra and Arazee Harmasra. The ghutwal, defendants, are in possession in mouzah Harmasra of 369 beegahs, 10 kuttahs of land, but according to the ghutwalee papers they are only entitled to 294 beegahs, 10 kuttahs of ghutwalee land in that mouzah: the remaining

75 beegahs of land are my rent-paying property. I sue the defendants therefore for possession thereof, laying my action at 150 rupees. I formerly brought an action against the ghutwal, defendants, and the maharajah of Burdwan for either possession of the mouzah or a reduction in the jumma or rent of the land; and in accordance with the decree in that case this suit has been preferred.

Puddolochun Roy, ghutwal, defendant, in his reply states that within the boundary as defined by plaintiff there are 28 beegahs of his jaggeer land: it is not in my possession but in that of Bekharee Roy, ghutwal, &c., &c.

The vakeel of Government in reply says that in ghaut Har-masra, there are according to the ghutwalee papers 14 ghutwals, in whose names there are 538 beegahs, 5 kuttahs of land, which they have always held possession of, &c., &c. An ameen was deputed to make a local enquiry in this case; and it appears from his report that there are altogether within the boundary mentioned by plaintiff, appellant, 335 beegahs, 5 kuttahs, 12 gundahs of land, of which 137 beegahs, 7 kuttahs, 12 gundahs, are acknowledged by both parties to be ghutwallee: the remaining land is claimed by Gasee Khan, Sadoo Khan and others, as rent-free.

The moonsiff of Oundah dismissed the suit, making the costs of all parties payable by appellant, plaintiff. Plaintiff appeals from the decision. After consideration of the proceedings and evidence I deem the decision of the lower court to be correct so far as the suit of plaintiff is dismissed; but his orders making the costs of suit of claimants payable by plaintiff, appellant, are incorrect. I concur with the moonsiff in the dismissal of plaintiff's claim because he has not proved that the land for which he sues is rent-paying, or that it was ever held by the former talookdar of lot Boolunpoor. Until that point is satisfactorily established, plaintiff is not entitled to possession of the land. Whether the claim of claimants is correct or not that the land is rent-free, that point cannot be enquired into, in this case: if the claimants hold the lands illegally as rent-free, plaintiff, appellant, has his remedy under the regulations, and can sue for the resumption thereof. For the above reasons the appeal is decreed, and the decision of the moonsiff modified in this respect that claimants are to pay their own costs of suit, but costs of appeal are payable by appellant.

THE 27TH NOVEMBER 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 85 of 1846.

Appeal from the decision of Baboo Juggobundhoo Banerjee, Moonsiff of Bishenpoor, Zillah West Burdwan.

Nobin Mohun Mookerjee, (Defendant,) Appellant,

versus

Musst. Nubung Munjoree Thakoorjee, (Plaintiff,) Respondent.

THE plaintiff is this, that defendant, Nobin Mohun Mookerjee, borrowed from plaintiff, on a bond dated 22d Assin 1251, rupees 99, and at his, Nobin's, request, his son Seebnerain Mookerjee signed his name to the bond. The amount was to be repaid in Falgoon. No part of the sum due having been liquidated, plaintiff sues for the same with interest, amounting to 105 rupees, 9 annas.

Defendant Nobin Mohun Mookerjee denies executing the bond and says he can write, and if he had borrowed the money from plaintiff he should have signed his own name to the bond, the suit is brought from enmity, &c. &c.

The moonsiff of Bissenpoor decreed the claim. Appellant prefers this appeal. After perusal of the evidence, and on inspection of the khata book produced by respondent pending the appeal, I am of opinion that the decision of the moonsiff must be reversed, because the evidence of plaintiff's witnesses are not entitled to credit, and it does not correspond with the suit of plaintiff, because witnesses Chundechurn and Bhoyrub depose that both Nobin Mookerjee and Seebnerain borrowed the money from plaintiff: this is contrary to the petition of plaintiff: and if appellant, defendant, Nobin had borrowed the rupees he would have signed his own name to the bond as he can write: this he has done in my presence this day. Some of the witnesses state that Nobin Mookerjee cannot write: their evidence is disentitled to credit as this is not true: and I am not inclined to place any reliance on the khata produced by respondent, as it appears to have been freshly written. For the above reasons I consider that plaintiff, respondent, has not proved her claim. The appeal is therefore decreed, and the decision of the lower court reversed, the suit being dismissed. Costs of suit in both courts being payable by respondent.

ZILLAH CHITTAGONG.

THE 3^D NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No 222.

Appeal from the Moonsiff of Bhojpore.

Ahsan Alla, Appellant, (Plaintiff,)

versus

Coolochunder, Mahomed Reza, and the Collector, Respondents,
(Defendants.)

THIS suit was instituted, on the 28th January 1845, to reverse a sale of a talook, made by the collector on the 6th August 1841, on account of a balance of rent of 1202 M. S., or 1840-41, when the turuff in which the talook is situated was under khas collection by Government, and the plaintiff states that the sale took place without his knowledge, that no balance was due, and that no publication of the sale took place.

The commissioner of revenue declined to defend the suit, and the moonsiff dismissed the case without investigation, on the ground that under Regulation VII. of 1825, and "other Regulations and Circular letters," the action was barred by the lapse of time which had occurred since the sale, (a little more than three years,) and because no petition had been presented to the commissioner or collector.

As this was not a sale for balance of public revenue no petition to the commissioner or collector objecting to the sale was necessary prior to bringing an action in the civil court, and Regulation VII. of 1825, quoted by the moonsiff, applies only to sales in execution of decrees of the civil courts and does not limit the time for bringing an action to quash them, whilst at the same time it does not appear that the sale in question took place under that Regulation. Under what law the sale was made is not very apparent in the present stage of the proceedings, although probably the collector proceeded or intended to proceed under the powers vested in him in Regulation VII. of 1799, Section 25, and if so an action to quash the sale is not barred, I apprehend, by lapse of time, till twelve years have expired from the date of it.

The moonsiff's decree is therefore reversed, and the case is remanded to him, with instructions to proceed with the trial.

THE 5TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 587.

Appeal from the Moonsiff of Bhuttearry.

Azeemodeen, Oomer Alli, Mahomed Ruffee, Puna Alla, Mahomed Alli, and others, Appellants, (Defendants,)

*versus*Lall Mahomed, Nuzeemodeen, and others, Respondents,
(Plaintiffs.)

IN this case plaintiffs state that appellants, defendants, dammed up a nullah called Kattah Khallie, and stopped the passage of the waters which had always before been drained off through that nullah, and thereby caused the waters to find their way along a part of a *gopat*, or road for cattle, called Dilbaz, in possession of plaintiffs as part of their talook in turuff Rummun Chand, and where, part of the *gopat* being low land, they had kept up embankments for many years to confine the waters and enable them to fish; that when they found the water taking this course they repaired their embankments to keep it out, and that defendants, appellants, forcibly cut through their embankments and flooded the place, whereby the passage was stopped up for cattle and men, the grazing ground was destroyed, and their fishing put a stop to; and the suit is to establish the right of plaintiffs to keep up the embankments, and to cause defendants to repair them.

Appellants deny having cut through the embankments, or that the embankments ever existed, and state that the land in question is not a *gopat* but part of nullah Goolia Khallie, which has always been open. They also deny having dammed up Kattah Khallie.

The moonsiff found from the evidence that the nullah Kattah Khallie is the usual passage for the drainage of the neighbourhood, and that when the water unusually accumulates the country is flooded, therefore that appellants, having caused the water to overflow by damming up the nullah Kattah Khallie, had no right to cut through the embankments made by the plaintiffs, he therefore decreed for the plaintiffs, interdicting appellants from preventing plaintiffs to keep up their embankments.

I see no reason to interfere with this decree, and the appeal is dismissed with costs.

THE 12TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 50.

Appeal from the late Sudder Ameen.

Musst. Lall Bebee, (Appellant,) Plaintiff,

versus

Golam Hosein and Soorma Bibi, (Respondents,) Defendants.

IN this case it appears that Jengie Chand, the late husband of the plaintiff, being about to die, executed a will on the 28th Kartick 1205 M. S., in which, after reserving 4 annas share of the value of his whole property, real and personal, for his own jatee kurruch, or personal charges, he bequeathed the remaining 12 annas in this manner, 1 anna to plaintiff and 5 annas to her infant son Kader Bux, 1 anna to Soorma Bibi, his second wife, and 5 annas to her infant son, and Golam Hosein, defendant, respondent, and Sona Alla he appointed wussies (trustees) under these conditions, viz. that when the infant children should come of age the wussies should pay over to them and to their mothers their respective shares and account to them for the property they had charge of; if the wussies should not agree, then Sona Alla, who was the brother of Jengie Chand, was to manage separately the shares of plaintiff and her son, and Golam Hosein, defendant, who is brother of Soorma Bibi, should manage Soorma Bibi's share and her child's; if either of the widows should leave Jengie Chand's house they were to be entitled to receive their share on demand. Three days after executing the will Jengie Chand died, and the wussies undertook the trust jointly. Sona Alla, one of the wussies, died on the 3d Falgoon 1205, and Golam Hosein, defendant, then remained sole wussie. The plaintiff states that on the death of Sona Alla she had a right to receive her own and her son's share at once, but that nevertheless Golam Hosein continued to keep charge of the property, and that on the 17th Falgoon, not many days after Sona Alla's death, the house of Jengie Chand having taken fire, where it appears the movable property was kept, Golam Hosein, defendant, carried off a box containing rupees 1400 and 12 gold mohurs, and some other articles, ornaments, &c., which at the instigation of Soorma Bibi he retains in his possession. Plaintiff states that she has received of her own and her son's share to the value of rupees 1080-9-1½, and that there is yet due to her the sum of rupees 782, and she includes in her claim not merely the 6 annas bequeathed by her husband, but also a half of the reserved 4 annas share, after deducting from it the sum of rupees 300, which, she says, is all that was actually expended in the funeral expenses of her husband.

Soorma Bibi has given no answer, but Golam Hosein, defendant, in his answer denies having been appointed wussie for plaintiff and her son, or ever having had their property in his charge, and says that Jengie Chand, when his death was approaching, after reserving 4 annas of his property for his funeral rites and for a mosque, divided the remaining 12 annas in the manner before stated, and requested him to act as wussie on behalf of Soorma Bibi and her son, whilst Sona Alla he requested to act for plaintiff and her son.

Golam Hosein brought no evidence to support his defence, and the sudder ameen held, that, with reference to discrepancies in the evidence of plaintiff's witnesses, it was not proved that Golam Hosein had taken away the property, as stated by the plaintiff, and dismissed the claim.

The witnesses it is true do not all agree exactly as to the amount of property carried off by Golam Hosein, defendant, when Jengie Chand's house was burned, but beyond this I see no discrepancies, and this I hold to be a point quite immaterial to the case. The general facts of the case, as I have before stated them, are fully established. The will is proved, the execution of it in presence of the wussies and their agreeing to act under it, as well as the fact of their subsequently so acting. It is also shewn upon more than usually respectable evidence, that, when it was attempted to adjust this dispute by a punchact (arbitration), Golam Hosein acknowledged that he still had in his possession 700 or 800 rupees of the property he had received charge of, and that he was willing to pay what was yet due to plaintiff if any respectable man would be security, or if the judge should so order. It is not however for the plaintiff to prove how much of the trust money Golam Hosein has still in his possession. Golam Hosein being a trustee, it is for him to render an account of his stewardship. Instead of doing so he has thought proper to deny altogether his responsibility, and this circumstance affords strong ground of presumption that he has not been acting fairly by plaintiffs. Looking at this fact and at the terms of the will, I think it quite in the spirit of it, Sona Alla being dead, that plaintiff should at once receive her share and that of her son as his natural guardian, without waiting till the majority of her child.

The claim upon the 4 annas reserved by Jengie Chand for his jatee kurruch I consider, however, to be inadmissible. This share was set aside for a particular purpose, and the witnesses to the will state that the expressed intention of Jengie Chand was that half of it should defray his funeral expenses and half be applied to the erection of a mosque. The plaintiff can on no ground have a claim upon any part of this fund, and she has moreover produced no evidence to shew that the money has not or will not be applied

as was intended by the deceased, Jengie Chand. I therefore reject this part of the claim.

The whole amount of the property left is stated in the will to be of the value of rupees 3725-10-5, and this valuation is not disputed and may be taken to be correct. Of this sum a 12 annas share amounts to rupees 2794-3-13-3, and the half of this, or the 6 annas bequeathed to plaintiff and her son

amounts to rupees	1397	1	16	3	2
Of this the plaintiff has received,	1080	9	2	0	0

Remain due,	316	8	14	3	2
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for which sum I decree for the plaintiff, on her own account and that of her son, against Golam Hosein, respondent, with costs of this and the lower court in proportion to the amount decreed, and interest from the date of this decree. The appeal is decreed, and the sudder ameen's decree is reversed.

THE 13TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 54.

Appeal from the late Sudder Ameen.

Musst. Rukema Banoo, Appellant, (Defendant,)

versus

Golam Hossein, Respondent, (Plaintiff.)

THIS is a suit to recover possession of a tank with the value of fish killed and of trees destroyed, and the plaintiff states that the tank is situated in the village of Haveleeshuhur, in turuff Mokeem Lall Basharat, which turuff in his replication he explains to have formerly formed part of turuff Jan Mahomed, and to have been separated from it. He says it was dug by his grandmother, and that he obtained it from his father by inheritance, and that in 1202 M. S. Mahomed Arof and others, defendants, ousted him from possession, and that in 1805, the turuff having been sold at auction, he has now entered into a settlement for the tank with the auction purchaser.

Musst. Rukema Banoo, appellant, who was an intervening defendant, states that the tank is situated in turuff Jan Mahomed; that the tank was first Jan Mahomed's and has descended to his heirs in joint occupancy; that 20 years ago the turuff was bought by one Mokbool Alli, since when the heirs of Jan Mahomed, including herself, continued in possession, and she denies the right of plaintiff to

exclusive possession, and claims a right to a share with him and with Mahomed Arof, defendant.

Mahomed Arof, defendant, gives a similar statement to that of appellant, and it appears from the answers of other defendants and from the evidence that plaintiff is also one of the heirs of Jan Mahomud, and that Arof, defendant, derives the right which he claims from Sanchee and Ahmud Alli, other heirs of Jan Mahomed.

The sudder ameen, after receiving the evidence on both sides, at first nonsuited the plaintiff on the ground that the Government measurement being still incomplete it was not yet determined to which of the turuffs the land belonged, and that, in his opinion, until this was ascertained the plaintiff's suit could not be entertained.

A summary appeal was preferred from this decree, and the judge reversed the decree, and directed the sudder ameen to bring the suit again on his file, and to decide the case with reference to the question of possession only, confirming that party in possession who should prove to have previously held it.

The sudder ameen accordingly, upon the evidence already before him, passed another decree giving possession to plaintiff.

I do not agree with the late judge in this mode of disposing of the case, which, in my opinion, if fit to be heard at all, should have been tried on the general merits. The decision ought not to have been restricted, contrary to the claim, to the mere question of possession without regard to the right thereto. Neither do I agree with the sudder ameen on the grounds on which he in the first instance nonsuited the case.

I find however that the plaintiff has not stated his case in that precise manner which the Regulations require. He has kept back much information which it was necessary he should have disclosed, evidently I think from a consciousness of some flaw in his case. In particular he has omitted to mention by what right he had possession previously to his being ousted in 1202, whether he held the tank as turufdar, talookdar, ryot, or by what tenure, and I therefore consider it quite impossible to adjudicate upon his claim, and that for this reason he should be nonsuited.

I therefore decree the appeal, reverse the sudder ameen's decree, and nonsuit the plaintiff, respondent paying costs of suit in this and the lower court.

THE 13TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 51.

Appeal from the late Sudder Ameen.

Mahomed Arof, Appellant, (Defendant,)

versus

Golam Hossein, Respondent, (Plaintiff.)

THIS is an appeal in the same case as appeal No. 54, this day disposed of. For the reasons stated in that appeal the sudder ameen's decree is reversed, the appeal is decreed, and the plaintiff is nonsuited, respondent paying all costs of suit in this court and that of the sudder ameen.

THE 17TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 43.

Appeal from the decision of the late Sudder Ameen.

Ahmed Alla, Appellant, (Defendant,)

versus

Akram Alli, Respondent, (Plaintiff.)

IN this case the plaintiff says that talook Mahomed Kasim belonging to him was sold by auction for a balance of rent claimed from him, that he sued to quash the sale and obtained a decree dated 5th September 1842, but that the appellant Ahmed Alla collected the rents from the cultivators of 10 kanees, 10 gundahs of the talook from 1199 M. S. to 1204 M. S., and he sues the appellant and the cultivators and other defendants for rupees 765, being the rent with interest for the years in question.

Appellant claims the land as part of talook Nunnoo Bibi.

It appears that in the suit to reverse the sale mentioned by plaintiff, the plaintiff included appellant as a defendant, giving what he called the boundaries of the lands of talook Mahomed Kasim. Ahmed Alla in his answer laid claim to part of the lands included in these boundaries, but his claim was not enquired into. No evidence on the point was taken either from plaintiff or defendant, and the sale was quashed merely upon the ground of an agreement to that effect between the collector, the auction purchaser, and the plaintiff. The sudder ameen however in the decree in question observed that Ahmed Alla had given no evidence in support of his claim, and in passing his decree he ordered that the lands should be given up to the plaintiff by Ramkunt according to the chuckbunds or boundaries in conformity to his agreement, at the same time releasing Ahmed Alla from the decree.

Ahmed Alla appealed against this decree, and the appellate court animadverted upon the decree of the lower court, stating that Ahmed Alla, having had nothing whatever to do with the sale, ought not to have been made a defendant, and that, as no evidence had been taken from plaintiff to prove the boundaries of his talook, the remark he made that Ahmed Alla had given no proof on his behalf on the same point was unfair, and the whole of the remarks as they affected Ahmed Alla were quashed.

Nevertheless the sudder ameen has given a decree in favor of plaintiff on the ground that, in the decree to reverse the sale before mentioned, the plaintiff had got a decree for this very land, the present appellant having been a defendant; and because Ahmed Alla admitted the land to be in his possession, and Pelie Ram, another defendant, acknowledged to having cultivated the lands of 2 kanees and 5 gundahs, and paid the rent to Ahmed, he gave a decree against these two jointly for rupees 273, principal and interest.

It is obvious from what has above been said that the grounds of the sudder ameen's decree are untenable. Independently of the circumstance of the decree reversing the sale of talook Mahomed Kasim, having been quashed as it affected appellant, it never in itself could be taken as having disposed of the question at issue between the plaintiff in that and this case and appellant. The suit was to quash a sale on the ground of irregularity and of no balance having in reality been due, and the question of the validity of the sale was the only one disposed of.

I consider that the plaintiff has utterly failed to establish his right to the rent of the lands in question, and I therefore annul the decree of the sudder ameen and decree the appeal, respondent paying all costs of suit in this court and the lower with interest.

THE 17TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 44.

Appeal from the decision of the late Sudder Ameen.

Bux Alli, Must. Myah Bibi, and Perun, Appellants, (Defendants,)

versus

Ahsun Alli, Respondent, (Plaintiff.)

THIS is an appeal in the same case as appeal No. 43, this day disposed of. Appellants were released from the decree of the sudder ameen, but costs were not awarded them. As in appeal No. 43, the whole claim of plaintiff has been dismissed, this appeal is decreed, respondent paying all costs in this court and that of the sudder ameen with interest.

THE 17TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 45.

Appeal from the decision of the late Sudder Ameen.

Musst. Mooja Bebee, Appellant, (Defendant,)

versus

Ahsun Ali, Respondent, (Plaintiff.)

THIS is an appeal in the same case as appeal No. 44, and on the same grounds, and for the reasons given in that case the appeal is decreed, respondent paying costs of this court and of the sudder ameen's with interest.

THE 17TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 46.

Appeal from the decision of the late Sudder Ameen.

Wassee and Boochun, *alias* Bocha Gazee, and others, Appellants,
(Defendants,)

versus

Ahsun Ali, Respondent, (Plaintiff.)

THIS is an appeal in the same case as appeal No. 44, and on the same grounds, and for the reasons given in that case the appeal is decreed, respondent paying the costs of this court and of that of the sudder ameen.

THE 17TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 49.

Appeal from the decision of the late Sudder Ameen.

Pelie Ram, Appellant, (Defendant,)

versus

Ahsun Ali, Respondent, (Plaintiff.)

THIS is an appeal in the same case as appeal No. 43 this day disposed of. For the reasons given at length in that case this appeal is decreed and the sudder ameen's decree is reversed, respondent paying all costs in this court and that of the sudder ameen.

THE 17TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 55.

Appeal from the decision of the late Sudder Ameen.

Ramjai, Ramdoolal, Dattaram, and Musst. Sharoda, Appellants,
(Defendants,)

versus

Mahomed Baker, Respondent, (Plaintiff.)

IN this case the plaintiff states that he is owner of turuff Derab Roostum, and that having caused the sale of talook Ramjewan subordinate to turuff Derab Roostum in execution of a summary decree for rent, he purchased the talook at auction himself ; but that appellants, having possession of 3 droons of the talook, refused to pay him rent or to enter into any agreement with him, and he therefore sues appellants and others, defendants, for possession of the land with mesne profits from 1204 M. S. to 1206.

Appellants denied in their answer to the claim having any land in their possession belonging to appellant.

The sudder ameen in his decree states that from copies of chittas of the recent measurement, and from the circumstances of the case, it is evident that, out of the land claimed, 10 kanees, 9 gundahs, 3 cowries of talook Ramjewan are in the possession of appellants, and that from a special appeal decree filed by plaintiff the rental of the land is rupees 2-8 per kanee : he therefore gives a decree against the appellants for the above quantity of land with mesne profits at the rate of rupees 2-8 per kanee.

But the documents mentioned by the sudder ameen are the only evidence of any kind adduced by the plaintiff. The chittas are held to establish the appellants' possession upon 11 kanees, 9 gundahs, 3 cowries of talook Ramjiwun, and the special appeal decree is taken to determine the rental. But chittas only shew that the said quantity of land has been measured by the revenue authorities as part of talook Ramjiwun, and in possession of appellants. Whether the lands have been correctly so measured is the question, and the plaintiff has adduced no evidence on the point. A chitta standing alone is very slender evidence of a man's interest in a parcel of land, and here there is no corroborative evidence whatever. Again, the special appeal decree so far from determining the rental of the lands of this talook, expressly leaves the point to be hereafter determined by the report of an ameen to be deputed by the court.

The sudder ameen's decree therefore has been based upon most insufficient grounds. But this is not all. It appears that the sudder ameen refused to receive the evidence of some witnesses, whom the appellants wished to call on the ground that more than 6

weeks had elapsed without their having proceeded in their defence. And yet I find that the evidence on which the sudder ameen decreed in favor of the plaintiff, was received after six weeks' default on their part. The case therefore when decreed by the sudder ameen had already died a natural death, and the sudder ameen's decree is in consequence a dead letter. I therefore reverse the sudder ameen's decree, which altogether does him the greatest discredit, arguing either partiality or gross ignorance, or the most culpable want of care in looking into the case, and I decree the appeal, respondent paying costs with interest of suit in this court and that of the sudder ameen.

THE 18TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 246.

Appeal from the decision of the Moonsiff of Bhuttearry.

Meher Ali, *alias* Mona Meajee, and Musst. Mulka Bibi, wife of
Alli Manjec, Appellants, (Plaintiffs,)

versus

Asghur Alli and others, Respondents, (Defendants.)

THIS is a suit for rupees 16, principal and interest, on account of rent due upon a quobooleat (agreement) for 7 rupees, 8 annas, dated 7th Assin 1194, and the moonsiff dismissed the claim on the ground that defendant Asghur Alli, who was said to have given the quobooleat, did not appear to have cultivated the land, and because the transaction as stated by the plaintiff was of a very improbable nature.

In appeal the appellants themselves explain the transaction in this manner. They say that in truth the quobooleat was not given with any view to the cultivation of land, but the fact is, they say, that Asghur Alli, defendant, having been arrested in a summary suit for rent, the appellant Meher Alli and the husband of Musst. Mulka Bibi the other appellant, lent him rupees 6 to get him released from arrest, and that as there was no stamp paper in the mofussil on which a bond could be drawn up, the defendant gave them a pottah for 3 kanees of land belonging to him at a jumma of rupees 6, and at the same time gave them also a quobooleat for the same land which was to remain in defendant's possession at a jumma of rupees 7-8, the 1 rupee 8 annas difference being for their monafa (profit) or in other words being on account of interest.

A more impudent attempt than this upon appellants' own shewing to evade the stamp duty which would have been chargeable upon a bond, it is impossible to conceive. I therefore dismiss the

appeal, affirm the decree of the moonsiff, and fine the appellants 10 rupees for preferring such a groundless and litigious appeal.

THE 19TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 292.

Appeal from the decision of the Moonsiff of Hathazarree.

Domun Sepoy, (Plaintiff,) Appellant,

versus

Buxie, Kumer Alli Moonshee, and others, Respondents,

(Defendants.)

IN this case the plaintiff sues to establish his right to the possession of a ditch which runs close along the south of his bari or house, and which the defendants deny he has any right to.

There is no documentary evidence in the case, and both parties have brought witnesses who give evidence according to the interest of each. The moonsiff has decreed in favor of the defendants, dismissing the plaintiff's claims, but without stating his reasons for preferring the evidence of the defendants to that of the plaintiff, and it appears to me that as little reliance is to be placed on the depositions on one side as on the other. The case is one in my opinion which can only be decided satisfactorily by a local investigation, when evidence may be had on the spot from witnesses unconnected with either party, and well acquainted with the rights of each; and appellant prays that an ameen be deputed. I therefore reverse the moonsiff's decree, and remand the case for retrial, and direct that an ameen be deputed to make a local enquiry prior to the disposal of the case.

THE 20TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 289.

Appeal from the decision of the Moonsiff of 1st Town Division.

Seetul Deen, (Defendant,) Appellant,

versus

Kalienath Bundopadaya, (Plaintiff,) Respondent.

IN this case plaintiff sues to obtain possession, with mesne profits, of 2 kanees, 2 gundahs, 2 cowries of land in the village of Chand Gang, claimed by him as part of turuff Ahsan Musoor his property, and which land he says is in the occupation of Seetul Deen, defendant, appellant, and of Kassim Alli and Chaud Bibi,

defendants, who refuse to pay rent or to enter into any arrangement.

Appellant claims the land as part of turuff Bhoobun Mohun.

The moonsiff decided the case in favor of plaintiff upon a soolooynamah, or deed of agreement, between plaintiff and Kassim Alli defendant, in which it is set forth that the land belongs to turuff Ahsun Musoor, and is the property of plaintiff, that plaintiff had given Kassim Alli a talookdarry pottah (lease) at a yearly jumma of 3 rupees, for which he had received a quobooleat in exchange, that Kassim Alli should occupy the land and pay the stipulated rent yearly, that plaintiff had remitted his demand for mesne profits and costs with the exception of 1 rupee, which rupee Kassim Alli was to pay in a month, and on failing to do so plaintiff was to take out execution against him.

Appellant protests against this decree under a soolooynamah to which he has not been a party, and certainly the moonsiff's mode of disposing of the case was most improper. It is true he says in his decree, though not in his "reasons of decision" recorded in his own hand, that the decree is not to affect any but the parties to the soolooynamah. But nevertheless such a decree cannot but be injurious to appellant. It leaves the point at issue between plaintiff and appellant exactly where it was, and opens the door to future litigation. I therefore reverse the moonsiff's decree, and remand the case to him with instructions to re-try it and to dispose of the claims of all the parties concerned.

THE 21ST NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 573.

Appeal from the decision of the Moonsiff of the 2d Town Division.

Kasinath Dutt, (Defendant,) Appellant,

versus

Munsoor Alli Khan, (Plaintiff,) Respondent.

IN this case the plaintiff sues to recover from the defendant the sum of rupees 99-3-5-10, stating that the said sum was in deposit in court and payable to him in a case in which he had obtained a decree, and that defendant, appellant, who was his constituted general mooktar or agent, without his knowledge drew the money out of court and applied to his own use; that defendant also borrowed from him the sum of rupees 104 on a bond, and that, having afterwards discovered the embezzlement by defendant of the sum before mentioned, he demanded the amount from him, but that defendant always deferred paying him.

Defendant, appellant, admits having drawn the money from court as stated by plaintiff, but pleads that much money having been

due to him by plaintiff as salary, he with the plaintiff's permission carried it to his own credit on account of his pay, that nevertheless the plaintiff afterwards claimed the money from him, and that after much disputation he gave the plaintiff a bond for rupees 104 on account of the money, with interest, intending to sue the plaintiff for his salary.

The moonsiff has decreed in favor of the plaintiff, but I find that his decree has been given upon the pleadings only without any evidence having been heard on either side.

It is true that the defence is of a suspicious character, but I think it also somewhat suspicious that plaintiff should have anticipated the plea of defendant by mentioning the loan of rupees 104, which has, according to him, no connexion whatever with the embezzlement of the rupees 99-3-5. It may be that plaintiff obtained information that this was the plea to be set up, and therefore anticipated it by the mention he has made of the loan of rupees 104. But whatever be the truth, the case requires, in my opinion, more sifting, and that evidence should be called for on both sides to establish their respective pleas. The moonsiff it appears only called upon the defendant for proof, and because he was unable to cause the attendance of his witnesses, though he took out every process against them to the attachment of their property, gave the case against him for not proving his defence. Even handed justice requires that proof should be necessary not more on one side than the other. I therefore reverse the moonsiff's decree, and remand the case for re-trial with reference to the above remarks.

THE 25TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 294.

Appeal from the decision of the Moonsiff of Bhutteary.

Doollah Gazee, *alias* Doollub, (Defendant,) Appellant,

versus

Parbuttee Churn, (Plaintiff,) Respondent.

In this case plaintiff sues to recover possession of 3 kanees, 15 gundahs of land in the village of Bansberria, of which land he states he obtained possession in 1198 M. S., from appellant and his brothers, under a deed of mortgage and conditional sale, the condition of which was that if the sum lent of rupees 62, should be repaid in three years, then plaintiff was to give up the land, otherwise the sale was to become absolute; and the plaintiff alleges that the money not having been paid by the time specified the sale had in consequence become final, but that nevertheless the appellant and others, defendants, ousted him from the land in 1201, collecting the rents from the ryots.

Appellant, the only defendant who appeared, in his defence denied altogether the plaintiff's statement, and asserted that he and his brothers, having borrowed from plaintiff the sum of rupees 31, gave him a lease of the land for six years on the understanding that he was to realize in that time the sum of rupees 62, on account of the principal sum lent with as much again as interest, that plaintiff accordingly held possession for six years to the year 1204, when he voluntarily gave up the land again.

The moonsiff at first nonsuited the plaintiff on the ground that he had not conformed to the provision of Regulation XVII. of 1806, Section 8, but on summary appeal the moonsiff was briefly informed by the late judge that he had misunderstood the Regulation, and directed to bring the case again on his file.

The moonsiff then made a reference to the judge, urging that plaintiff should be nonsuited on the grounds before stated in his decree, and the reference having come before myself, I intimated to the moonsiff my opinion that the plaintiff's claim was not, as supposed by the moonsiff, to have the sale declared absolute, which in his ignorance of the Regulations the plaintiff considered it had already become, but to recover under wrongful dispossession, and therefore to admit of this point being tried it was not necessary for plaintiff to have conformed to the Regulation in question, and I observed that it would be quite competent to the moonsiff to put plaintiff in possession as mortgagee (should he establish his right), and thereby to place him in the position he was in before being ousted.

In the decree which the moonsiff has now passed he states that plaintiff has now given proof of his having conformed to the provisions of Regulation XVII. of 1806, Section 8, since the institution of his suit, and accordingly, on the ground that the sale is now absolute, he decrees for plaintiff, awarding possession and mesne profits from 1201 M. S.

But even if the sale may have now become absolute, this can be no grounds for awarding mesne profits to plaintiff for a period antecedent to its having so become, and the moonsiff has in fact pronounced the sale to be absolute, which he was not called upon to do. I find too that the plaintiff has adduced no evidence whatever of dispossession, and I consider it absolutely necessary that this very material point, upon which his whole case almost rests, should be established by plaintiff before an award can be given in his favor. The moonsiff's decree I consider unsatisfactory and his investigation incomplete, and I therefore remand the case for re-trial. The moonsiff will receive any further evidence either party may wish to produce, and will especially call upon plaintiff for proof of dispossession.

THE 26TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 299.

Appeal from the decision of the Moonsiff of Bhojpore.

Akbur, Appellant, (Plaintiff),

versus

Shumsher Alli Chowdheree, and others, (Defendants,)

Respondents.

IN this case plaintiff sues to cancel a summary decree and a quobooleat upon which the decree was obtained on the part of Shumsher Alli defendant, and to recover the sum of rupees 11-8-3 realized from him under the decree, and he states that he never executed the quobooleat which is a false document, that 1 kanee, 15 gundahs of the land mentioned in the quobooleat belongs to Judistee, defendant, to whom he has always paid rent, and that the rest of the land he never cultivated.

Judistee, defendant, claims the 1 kanee 15 gundahs mentioned by the plaintiff, and states that the plaintiff has always paid him the rent.

Shumsher Alli, defendant, claims the whole of the land mentioned in the quobooleat, viz. 4 kanees, 1 gundah, and states that plaintiff executed the quobooleat of his own free will, and that he sued for rent upon it through his servant Mahomed Hossein and got a summary decree.

The moonsiff dismisses the plaintiff's claim, stating as his reason in his decree that the summary suit was brought 4 or 5 months after the date of the quobooleat, and from the date of the summary decree to the institution of this suit 11 months had elapsed, and that, if the quobooleat had been false and forcibly taken, the plaintiff would have brought his action to cancel it without delay.

But this decree of the moonsiff is founded upon an erroneous assumption, for the plaintiff does not say that the quobooleat was taken forcibly. He denies having ever executed the document whether forcibly or otherwise. He knows nothing whatever about it. This decision therefore of the moonsiff cannot be upheld. It appears moreover that the moonsiff has disposed of the case without any sort of investigation whatever, and that he has not even taken evidence to prove the quobooleat, having assumed its authenticity upon the strength alone of the summary decree which it is here sought to reverse. The case is therefore remanded to the moonsiff, who will call upon all the parties to the suit to prove their respective claims, and he will depute an ameen to ascertain by local enquiry whether plaintiff cultivated the land in question or not, and whether the land claimed by Judistee forms part of it or not.

THE 26TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 301.

Appeal from the decision of the Moonsiff of 2d Town Division.

Baptist, Appellant, (Defendant,)

versus

Shustee Churn, Respondent, (Plaintiff.)

PLAINTIFF sues as the representative of his brother Harie Dass deceased, to recover the sum of rupees 32, on a bond which he states was executed by appellant and by Buxoo deceased, the father of defendant Hyder Alli. The bond was given on 14th Pous 1202, and the money was to be repaid in the Cheit of the same year.

Appellant admits the bond, but pleads that only rupees 25 was the actual sum borrowed, and that the additional rupees 7 was on account of interest, that no part of the borrowed money was received by him, the loan in fact having been made to Buxoo only, and that his name was entered in the bond by way of mataberie only, or as security.

Two of the witnesses to the bond adduced by plaintiff state that only 25 rupees was paid, and that 7 rupees was added on account of illegal interest, and the defendants adduce several witnesses, bystanders at the time of executing the bond, in support of this plea of appellant, but three other witnesses to the bond state that rupees 32 was paid in cash, and the moonsiff has given credit to the evidence of these last mentioned witnesses and decreed for plaintiff. The moonsiff was of opinion that the other two witnesses to the bond had been tampered with, and thought it very unlikely that an illegal transaction, such as that attempted to be established by defendants, would have been done before so many witnesses as depose to the fact.

I see no reason to interfere with this decree, which is affirmed accordingly. Appeal dismissed with costs.

THE 28TH NOVEMBER 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 305.

Appeal from the decision of the Moonsiff of Bhuttearry.

Ameer Khan, Appellant, (Defendant,)

versus

Soudagur, Respondent, (Plaintiff.)

THIS is a suit for possession as ryot of 1 kanee, 5 gundahs of land, of which plaintiff says he obtained possession originally under

a pottah from the talookdar dated 12th Jeit 1202, to whom he paid rent until the zemindary came under the khas collection of Government, when he paid rent to the collector, and that appellant and others ousted him in Jeit 1206.

The moonsiff has decreed for the plaintiff chiefly upon a report of the serbarakar or manager of the estate, procured through the collector, in which the serberakar states that the land claimed by plaintiff is distinct from that included in the pottah of appellant.

But the serberakar is scarcely a competent witness in this case, and certainly his evidence, obtained in this irregular manner, is inadmissible. The moonsiff will depute an ameen to make a local enquiry and to compare the land of the two pottahs together, taking care at the same time to prove the pottahs in question, which very necessary step he has omitted to observe.

The case is remanded for re-trial with reference to the above remarks.

ZILLAH CHITTAGONG.

THE 2D NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 151.

Appeal from the Moonsiff of Putteeah.

Abdool Ruheem *alias* Feringee, Appellant, (Defendant,)

versus

Eshan Chunder, Respondent, (Plaintiff.)

IN this case Radahram, (deceased) and his son Eshan Chunder complained against the defendant for attaching their cows for rent said to be due and for taking four rupees, although they had no land in cultivation belonging to the defendant. Damages laid at 8 rupees.

The defendant stated that Eshan Chunder borrowed from him 12 rupees, and assigned over to him 2 canecs of land in mouza Kuchwye for six years, and gave a cubooleat through his father Radahram engaging to pay 4 rupees per annum for six years. The money was duly paid for five years, and when the plaintiff would not pay the amount for 1205 M. S., he (the defendant,) attached his property.

The defendant had no document to support his case, and alleged that his papers had been burnt. There was a discrepancy also in the evidence of his witnesses. The moonsiff decreed in the plaintiff's favor, and I see no reason for interfering with this decision, which is hereby confirmed, and the appeal dismissed with costs.

THE 2D NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 159.

Appeal from the Moonsiff of Putteeah.

Futteh Alli, Appellant, (Plaintiff,)

versus

Ubul Hossein, Meennoo, Umeeronissa, Abdool Alli, Golam Hosein, Mahomed Moorad, and the Collector of Chittagong, Respondents, (Defendants.)

THE plaintiff sued to cancel the measurement and settlement of 2 canecs and 1 gundah of land made with Ubul Hossein, one of the defendants. Damages laid at 149 rupees.

The plaintiff declared that this land was his own property, and in excess of the land in Turuff Petan Jumma; that in the year 1189 M. S., his father gave it in farm to Allee Mahommud, and Ubul Hossein engaged to cultivate the same, and pay the rent to the farmer. Subsequently the plaintiff's father assigned this land over to Mahomed Moorad, to whom Ubul Hossein was also to pay rent. The defendant, Ubul Hossein, replied that the land in question did not belong to Petan Jumma, but was lakheraje towfeer called Ruffee Cazees, and had been in the possession of his ancestors for many years; that nine years had elapsed since the settlement of this land on the part of Government had been made with him, and he continues to pay rent to Government.

It appears from the papers that the plaintiff's father endeavoured on three different occasions to oust the defendant, Ubul Hossein, from this land without success. In the year 1837 it was released from attachment in favor of Ubul Hossein; again in 1838 the deputy collector made a settlement of the land with him, which was confirmed in appeal by the commissioner.

It is true that the plaintiff brings forward a cubooleut for this land said to have been signed by Ubul Hossein in the year 1189 M. S., but this document does not appear to have been presented on any of the occasions above referred to. Under these circumstances the moonsiff very properly dismissed the plaintiff's claim. The order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 4TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 185.

Appeal from the Moqsiff of Noaparah.

Syud Gurreeboolla, (Appellant,) Defendant,

versus

Ameeroonissa, (Respondent,) Plaintiff.

IN this case the plaintiff sued her husband for maintenance. Damages laid at 16 rupees.

It appeared that on the marriage of the plaintiff with the defendant, he had written an agreement, and amongst other matters it was stated that, if in consequence of any disagreement the wife wished to live elsewhere, she was at liberty to do so, and he would allow her two rupees a month as maintenance. About two years after the marriage the wife left her husband and went to her father's house; and in consequence of her husband not affording her proper support, she brought the present action.

The defendant replied that he wished his wife to live with him, but her father would not allow her to do so. As the agreement was fully attested by evidence, and the husband acknowledged having written it, the moonsiff decreed in the plaintiff's favor. In this opinion I concur, and the order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 4TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 213.

Appeal from the Moonsiff of Putteeah.

Rugoonundun Purohit, Appellant, (Plaintiff,)

versus

Mohischunder Canoongoe, Gopal Kishen Canoongoe, and Ram Ram Choudree, Respondents, (Defendants.)

THE plaintiff sued to cancel the attachment of 1 d., 1 k., 16 g. and 2 c. of land. Damages laid at 200 rupees.

The plaintiff stated that, on the 6th Bysack 1201 M. S., he purchased from Mohischunder Canoongoe, one of the defendants, 3 d., 13 k., 10 g., 1 c., 3 d., of land in mouzah Dukhin Bamundenga, &c., for 200 rupees; that out of this land, 1 d., 1 k., 16 g., 2 c., were unjustly attached by the defendant, Gopal Kishen, to recover the amount of a debt due from Mohischunder.

He stated however that the deed of sale had been lost subsequent to its withdrawal from the office of the sudder moonsiff.

The defendant, Gopal Kishen, declared that the land in dispute belonged to Mohishchunder Canoongoe, who had colluded with the plaintiff to avoid the payment of his debt; that the land was sold two years after its attachment, and if the plaintiff's claim had been correct, he would have preferred it before.

There was nothing to show that the deed of sale, which had been lost, was genuine; there was a discrepancy also in the evidence of the witnesses, and strong grounds for believing that Moheschunder had colluded with the plaintiff.

Under these circumstances the moonsiff very properly dismissed the plaintiff's claim. The order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 9TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 91.

Appeal from the late Sudder Ameen.

Musst. Ameer Jan Bebee, wife of Abdool Kadir, deceased,
(Defendant,) Appellant,

versus

Rammunee Fotedar, (Plaintiff,) and Abdool Mujeed, (Defendant,) Respondents.

IN this case the plaintiff sued to recover the sum of 400 rupees the value of 600 arees of mustard seed. He stated that on the 26th Bysack 1205 M. S., the defendants, "Ameer Jan Bebee" and "Abdool Mujeed," received from him 200 rupees, and promised upon a bond to deliver to him 600 arees of mustard seed in the month of Magh ensuing.

The defendants denied the transaction, but, as the bond was duly attested by witnesses, the sudder ameen decreed in favor of the plaintiff to the extent of 300 rupees, the value of 600 arees of mustard seed. As I see no reason to interfere with this decision, the order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 12TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 163.

Appeal from the Moonsiff of Deeang.

Gour Chunder, Appellant, (Defendant,)

versus

Assen Alli and Asgur Alli, Respondents, (Plaintiffs.)

THE plaintiffs in this case sued to annul a summary decree, and to recover excess rent levied from them. Damages laid at 22 rupees, 13 annas.

The plaintiffs stated that they and their father cultivated 7 canees and 5 gundahs of land in Turuff Firdose at a rent of 9 rupees, 12 annas per annum, and 3 canees and 5 gundahs of land for 45 arees of rice, which they paid to Gour Chunder, the auction purchaser, through his agent, Jeetram. The defendant, Meer Cassim, under pretence that 2 canees, 12 gundahs and 3 cowries of this land belonged to him, realized from them by a summary decree 4 rupees, 15 annas, and 3 rupees, 5 annas, costs; and subsequently Jan Alli Moonshee and Meer Cassim collected from them for the years 1204 and 1205 M. S., the sum of 16 rupees, 14 annas. The plaintiffs

paid to Gour Chunder 19 rupees, 8 annas rent, and 90 arees of rice, and therefore complained of having been obliged to pay their rents to two different masters for the same land.

The defendant, Meer Cassim, alleged that he had purchased at the Government sale 10 canees and 5 cowrees of land belonging to talook Momtaznissa; that he found 2 canees 12 gundahs and 3 cowries of this land in the cultivation of the plaintiffs and their father, but they would not pay their rents on the grounds that the land belonged to Gour Chunder.

At the time of the mofussil measurement Gour Chunder delivered a paper or "tydad" to the deputy collector comprising the lands in talook Firdose, and in this document there was no mention of the land in dispute.

From the dakhila signed by the deputy collector, and particularly from the enquiry instituted on the spot, it was proved that the land in question belonged to talook Momtaznissa, the property of Meer Cassim. Under these circumstances the moonsiff decreed in favor of the plaintiffs. As Meer Cassim admitted having received 16 rupees, 6 annas, the moonsiff, calculating the rent of the land for 1204 and 1205 M. S., at 7 rupees 2 annas, deducted this sum, and 3 rupees 5 annas costs, leaving 5 rupees 15 annas, to be refunded by Meer Cassim and Jan Alli to the plaintiffs. He decreed also against Gour Chunder 7 rupees 2 annas, the amount of rent which he had improperly collected.

Gour Chunder is dissatisfied with this decision; but as it was clearly proved from the papers that Gour Chunder collected rent from land which did not belong to him, but to another estate, the order of the moonsiff was perfectly correct, and is hereby confirmed, and the appeal dismissed with costs.

THE 13TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 165.

Appeal from the Moonsiff of Sathaneeah.

Mahomud Hossein and Jafer Alli, Appellants, (Defendants,)

versus

Dataram Koolall, Respondent, (Plaintiff.)

IN this case the plaintiff complained against the defendants for the illegal attachment and sale of his property. Damages laid at 40 rupees, 9 annas, 6 pie.

It appeared that the defendants, under the pretence that 12 rupees rent were due to them for 6 canees of land in mouza Bura Huttia for the year 1206 M. S., attached the plaintiff's personal property through their own servant Booda Gazee. Sixteen articles were sold for 16 rupees, 7 annas, 3 pie, and after deducting the amount of rent, costs and fees of sale, the plaintiff received back 2 rupees, 14 annas, 9 pie. There was nothing to show that the plaintiff cultivated any and belonging to the defendants.

The defendants denied the charge altogether: but it was proved that Booda Gazee was a servant of the defendants, and that they had caused the attachment and sale of the plaintiff's property without any reason or document for so doing. Under these circumstances the moonsiff decreed in the plaintiff's favour, and I see no reason to interfere with this decision, which is hereby confirmed, and the appeal dismissed with costs.

THE 16TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 166.

Appeal from the Moonsiff of Sathaneeah.

Mahomud Nusseem, Appellant, (Defendant,)

versus

Tumeezooddeen, Respondent, (Plaintiff.)

THE plaintiff in this case sued to recover the value of some cloth. Damages laid at 24 rupees. It appeared that the plaintiff sold to the defendant forty-two pieces of cloth valued at forty-two rupees: he received at different times the sum of 18 rupees, and sued for the balance 24 rupees.

The defendant admitted the transaction, but declared that he had paid the balance of 24 rupees in the presence of respectable witnesses. As he did not produce any evidence to this effect, the moonsiff decreed in the plaintiff's favour, in which opinion I concur. The order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 17TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 170.

Appeal from the Moonsiff of Putteeah.

Surfraz, son of Aboo Taleeb, deceased, Appellant, (Defendant,)

versus

Shamut Alli and Abdool Alli, Respondents, (Plaintiffs.)

THE plaintiffs in this case sued to cancel a summary decree, and recover excess rent levied from them. Damages laid at 15 rupees, 12 annas, 10 pie.

The plaintiffs stated that they had 1 canee and 10 gundahs of land in cultivation in mouza Keshooa, Turuff Ram Hurree Canoongoe, at a rent of 2 rupees, 4 annas per annum, which they paid to the auction purchasers, Ramsoonder and Goordass Pal, up to the year 1202 M. S. They subsequently paid this rent to Surfraz the defendant, who had taken this land under a talooke pottah. They complained however that Surfraz afterwards realized from them by a summary decree the sum of 8 rupees, 7 annas, 2 pie.

The defendant replied that the plaintiffs had 4 canees of land in their cultivation; that 8 rupees, 4 annas had been paid for the year

1204 for 2 canees and 10 gundahs of land, but as he could not obtain payment for the remaining 1 canee and 5 gundahs, he instituted a summary suit. As this statement was not supported, the moonsiff decreed in the plaintiffs' favour.

The appellant is dissatisfied with this decision, but as he could not prove that the plaintiffs had four canees of land under cultivation, or that he was entitled to levy the excess rent complained of, I see no reason to interfere with the order of the lower court, which is hereby confirmed, and the appeal dismissed with costs.

THE 19TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 178 of 1846.

Appeal from the decision of the Moonsiff of Rawoojan.

Obhye Churn Nundee, Appellant, (Plaintiff,)

versus

Eshan Chunder and Motoornath, Respondents, (Defendants.)

THE plaintiff sued to recover the value of 71 arees of rice due to him for the year 1206 M. S.

He stated that his father on the 27th Poos 1178 M. S., assigned to one Bocha Gazee, 5 canees and 5 gundahs of land in moujah Chikdyr upon a talookee tenure, for which he was to pay 89 arees a year of rice, 3 rupees Sicca, and other articles by way of nuzzur, all which his father received up to 1205 M. S. In 1206 M. S., Bocha Gazee transferred his rights to the defendants Eshan Chunder and Motoornath, and they paid the plaintiff all their rent, except 71 arees of rice. The defendants acknowledged the statement of the plaintiff, but the moonsiff, suspecting that they were colluding with the plaintiff, dismissed the case, without taking any evidence regarding the cobooleat presented by the plaintiff, and without calling for any proofs from Shamat Alli who claimed 4 gundahs of this land as his property.

As the enquiry is incomplete, the appeal is decreed, and the case returned for re-trial, and the moonsiff will take evidence upon the points alluded to. The amount of stamp paper, upon which the petition of appeal is engrossed, will be refunded to the appellant.

THE 20TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 198 of 1846.

Appeal from the decision of the Moonsiff of Issapore.

Mahomed Mookim and Mahomed Tuckee, (Appellants,) Defendants,

versus

Dewan Alli and Kumer Alli, (Respondents,) Plaintiffs.

It appeared that the defendants in this case assigned over for six years to the plaintiffs, for a consideration of 30 rupees, 5 canees of

land situated in mouza Pyndung, talook Jan Bux Khan, the property of Kalindee Ranee. After the expiration of six years the land was to be given up by the plaintiffs. As the plaintiffs could not gain possession, they sued the defendants for the sum of 34 rupees, 9 annas, principal and interest.

The defendants acknowledged the transaction in the first instance, but alleged that the money was taken back again by the plaintiffs for the purpose of procuring for the defendants, according to agreement, a lease of some other land from the zemindar. This matter is altogether distinct from the deed of assignment; and had it been true, there is no doubt that the defendants would not have given up the deed, until the particular agreement had been fulfilled, or at all events would have endeavoured to regain the deed, when they perceived that their object had not been accomplished. Under these circumstances I see no reason to disturb the decision of the moonsiff, who decreed in favor of the plaintiffs. The order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 23D NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 207 of 1846.

Appeal from the decision of the Moonsiff of Noaparah.

Musst. Soometra, wife of Moochurea, deceased, Appellant, (Plaintiff.)

versus

The Collector of Chittagong, Bhoranuddeen, Sunaolla, Musst. Bapchee, and others, Respondents, (Defendants.)

THE plaintiff sued to gain possession of a tank comprising 2 kanees, 18 gundahs and 3 cowries of land, valued at 16 rupees, and sued also to have the measurement paper corrected.

The plaintiff stated that a tank, which had been excavated by her father-in-law, and had been in her husband's and afterwards in her own possession for a long time as lakheraj, had been improperly included at the late measurement in turuff Futteh Sing, with which estate it had no connection.

The defendants replied that the tank belonged to mouza Hyder Kool, turuff Futteh Sing, pergunnah Rusoolnuggur, and was recorded as such in the measurement paper of the year 1127 M. S. As this fact is clearly proved by the measurement paper alluded to, I see no reason to disturb the decision of the moonsiff, who dismissed the plaintiff's claim.

The order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 24TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 232 of 1846.

Appeal from the decision of the Moonsiff of Rawoojan.

Ahmud Alli, Shumsheer Alli, and others, Appellants, (Defendants,)
 versus

Mahomud Tuckee, Respondent, (Plaintiff.)

THE plaintiff sued to recover rent improperly levied from him. Damages laid at 24 rupees.

According to his statement it appeared that although he did not cultivate any land belonging to the defendants, they attached his cattle on the 1st Kartick 1207 for rent said to be due. He in the first instance sent through one Nuzzur Mahomud the sum of 12 rupees to effect their release, of which 6 rupees were taken by the defendants, and a receipt granted for the same. He was subsequently obliged to give 6 rupees more through one Mohussun, for which sum he could not obtain a receipt. With the exception of Mohussun all the defendants denied the plaintiff's allegation. This person declared that he was appointed by Ahmud Alli and Shumsheer Alli, an itmamdar, and as the plaintiff refused to pay his rent for 1207, he attached his cattle, which were afterwards released on his engaging to pay the rent in ten days. The defendant, Mohussun, could not support his statement, nor could the other parties shew that they were in any way entitled to demand rent from the plaintiff. Under these circumstances I see no reason to disturb the decision of the moonsiff, who decreed in favor of the plaintiff. The order of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 24TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 237 of 1846.

Appeal from the decision of the Moonsiff of Puttea.

Busseerollah, son of Mooftee Goreebollah, deceased, Appellant,
 (Defendant,)

versus

Kumer Alli, Becha Gazee, and others, Respondents, (Plaintiffs.)

THE plaintiffs sued to cancel the decree of the deputy collector, and recover the amount of rent improperly levied from them. Damages laid at 35 rupees, 7 annas, 9 pie.

It appeared that the defendants obtained an exparte decree against the plaintiffs for rent said to be due for 6 kanees and 10 gundahs of land in mouza Gachburreah, turuff Brijkishore. The plaintiffs acknowledged that they held under a talookee tenure several portions of land belonging to the defendant, but these 6 kanees and 10 gundahs of land were not included in their engagements.

The defendant declared that the land in question was in the first instance held by Gol Mahomed, the father of plaintiffs, and, subsequently on the 24th Kartick 1184 M. S. Kumer Alli, his son, and Shohur Banoo, his wife, signed a settlement paper for this land at an annual rent of 16 rupees, 15 annas.

There was much discrepancy in the evidence of the witnesses ; some indeed asserted that Kumer Alli was a minor at the time he is said to have signed the paper alluded to. Independent of this the signature of Kumer Alli on this paper differs materially from that affixed to other papers in the case. Under these circumstances the order of the moonsiff is confirmed, and the appeal dismissed with costs.

THE 25TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 242.

Appeal from the decision of the Moonsiff of Deeang.

Mahomed Mussood and others, Appellants, (Defendants,)

versus

Mahomed Ruffee, Respondent, (Plaintiff,)

Goolam Hossein and Dewan Alli, Respondents, (Defendants.)

THE plaintiff sued to recover excess rent levied from him. Damages laid at 5 rupees, 10 annas. It appeared that he cultivated 1 kanee and 10 gundahs of land in mouza Seekulbahar, and paid 2 rupees, 4 annas per annum as rent to Goolam Hossein, and continued to do so up to 1205 M. S. On the 1st Bysack 1206 M. S., the defendants, under the pretence that rent was due, attached his property, and sold it at a low valuation for 2 rupees, 13 annas. He complained therefore of being obliged to pay rent for the same ground to two different parties. The defendant, Goolam Hossein, acknowledged having received rent always from the plaintiff. The defendants, Mahomed Mussood and Dewan Alli, stated that they purchased 2 doors, 2 kanies, 17 gundahs, and 2 cowries, of land in mouza Seekulbahar, talook Asulut Khan, turuff Fazil Ameer; that in the recent measurement paper in the allotment No. 2932 the name of Goolam Hossein, was recorded for 1 kanee, 5 gundahs and 3 cowries of land, which was then in the cultivation of the plaintiff, Mahomed Ruffee. As he would not pay his rent they acknowledged having realized from him 2 rupees, 13 annas rent and costs.

The moonsiff decided that the sale alluded to by the defendants had been annulled, and therefore decreed in favor of the plaintiff, but I do not see any paper affording such information. Besides this the moonsiff should have ascertained what particular rights Goolam Hossein possessed, and whether this land was included in the purchase said to have been made by the defendants. As the enquiry is incomplete, the appeal is decreed, and the case returned for re-trial, and the will ascertain the points alluded to. The value of the

stamp paper, upon which the petition of appeal is engrossed, must be refunded to the appellant.

THE 25TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 100 of 1846.

Appeal from the decision of the Moonsiff of Noapara.

Ramsurun, Bindabun, and Dookee Ram, sons of Tupussea Ram,
deceased, Appellants, (Defendants,)

versus

Gunga Doss Sein, Kalee Doss Sein, Sheeb Doss Sein, and others, Respondents, (Plaintiffs.)

THE plaintiffs sued to cancel a deed respecting 4 canees and 10 gundahs of land. Damages laid at 146-8.

It appeared that defendants had in their possession 4 canees and 10 gundahs of land in mouja Goozra, turuff Kisht Mungul by virtue of a deed dated the 3d Bysack 1195 M. S. The plaintiffs declared that the document was not genuine, that Bustum Churn one of the sellers was a minor at the time he is said to have signed the paper, that the property was entire and undivided, and could not be transferred, and moreover that the land was not lakeraje, as alleged by the defendants, but kheraje land belonging to turuff Kisht Mungul.

The defendants on the other hand declared that the land never belonged to the plaintiffs; it was the property of Kisht Mungul, the father of Obhye Churn and Bustum Churn, who sold it to them (defendants) for 90 Sicca rupees by virtue of a deed dated 3rd Bysack 1195 M. S.

The moonsiff suspected and objected to the deed, and decreed in favor of the plaintiffs.

This case was heard on the 7th September last, on which occasion it appeared that the plaintiffs (respondents) had filed a number of papers, but had not proved that the land in question was undivided property, that it was turuff land, or that Bustum Churn, one of the sellers, was a minor at the time the deed was prepared: on the part of the appellants it was clear that the deed was duly attested by witnesses, and that they had been in possession for nearly twelve years. Besides this, in a case of dispossession, where Ramsurun one of the appellants was plaintiff against Gunga Doss one of the respondents, an ameen was deputed to the spot, and the criminal court on the 24th December 1844 maintained Ramsurun in possession of this land. Again, from a proceeding of the commissioner of revenue in a case where Ramsurun complained against Sheeb Dass one of the respondents, it appeared that he was also allowed to remain in possession of this land. Under these circumstances the appeal was accepted, and the usual notice issued to the respondents for the purpose of producing Bustum Churn. The parties appeared this day, and Bustum Churn also, whose appearance indicates him to be 32 years

of age, which corresponds with the evidence of the appellants' witnesses, and with the age mentioned by Bustum Churn himself in a plaint dated the 5th January 1841. As I see no reason to alter my former opinion, the appeal is decreed, the order of the lower court reversed, and the respondents will pay the appellants' costs in both courts.

THE 26TH NOVEMBER 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 155 of 1846.

Appeal from the decision of the Moonsiff of Rawoojan.

Harroo Jemadar, Appellant, (Defendant,)

versus

Ubdool Mujeed, Zecawul Hossein, and Amanoollah, Respondents,
(Plaintiffs.)

THE plaintiffs sued to cancel the decree of the deputy collector, and recover rent improperly levied from them. Damages laid at 42 Company's rupees. It appeared that the plaintiffs had, according to their statement, in cultivation 2 doons, 4 canees, 14 gundahs and cowrie of land lakheraje in mouza Eachasurree Dala Soorut Sing, the property of Burkutoolla, to whom they paid their rent. The defendants however obtained a summary decree against them for 35 rupees, 6 annas, 4 pies, for rent alleged to be due for 2 doons of this land, and collected 42 rupees. The defendant Harroo Jemadar stated that, in consequence of the plaintiffs not paying their rent for 1205 M. S., he instituted a summary suit for its realization.

There were no satisfactory proofs on either side, but the moonsiff decreed in favor of the plaintiffs.

This case was first heard on the 2d instant, when it appeared that the appellant was dissatisfied with the moonsiff's decision upon two grounds; first, that the plaintiff should have included Burkutoolla as a defendant, and secondly, that, as the sum claimed amounted to 77 rupees, the plaint should have been written on a stamp paper of 8 rupees value instead of 4 rupees. The appeal was accepted, and the usual notice issued to the respondent, who has not filed any reply in the matter. It is clear that the sum claimed by the plaintiff did not exceed 42 rupees, the amount of stamp paper therefore is correct; but the other objection of the appellant is valid, for, as the question for consideration was the right and title to receive rent from the plaintiffs, Burkutoolla should have been included as a defendant in the case, and the plaintiff, having failed to do so, should have been nonsuited. Under these circumstances the appeal is decreed, the order of the lower court reversed, and the case nonsuited, and the respondents will pay appellant's costs in both courts.

ZILLAH CUTTACK.

THE 9TH NOVEMBER 1846.

PRESENT: HENRY BROWNLOW, JUDGE.

No. 12 of 1845.

Appeal from the Principal Sudder Ameen.

Bulbudder Hurrichundur Mahapatur, (Defendant,) Appellant,

versus

Mr. J. Atkinson, (Plaintiff,) Respondent.

No. 2 of 1846.

Mr. J. Atkinson (Plaintiff,) Appellant,

versus

Bulbudder Hurrichundur Mahapatur, (Defendant,) Respondent.

THE following is a brief abstract of the case out of which these two appeals arose.

The 10th August 1840 was the day fixed for the sale of certain portions of "Killa Gagra Damurpore," the zemindaree of defendant's father, Hurrikishen Hurrichundur, in satisfaction of two decrees of court, one in favor of Madhub Rai, the other in favor of the plaintiff, who states that 3 or 4 days prior to the intended sale, overtures were made to him by Hurrikishen for the private transfer of 2 annas of this property for the sum of rupees 2,500. That the day of auction however approached and the deed of sale was still undrawn, when Hurreekishen succeeded in borrowing rupees 285 from the plaintiff to satisfy Madhub Rai's decree, on the promise of perfecting the transfer the next day: the sale was accordingly stopped on his account, and also on that of the plaintiff, who himself petitioned to that effect.

This promise was never matured; for although the quabaleh was written, the signature of Hurreekishen was throughout withheld, and as a matter of course, when plaintiff sued for possession in August 1840 on the strength of this imperfect deed, his suit was dismissed in the sudder ameen's court, which decision was upheld in regular and special appeal.

He now enters court against the son for the recovery of the rupees 285, *plus* interest, lent to the father to stay the sale in execution of Madhub Rai's decree.

The defendant denies the claim *in toto*, urging the non-existence of any deed in support thereof, and impugning the credibility of the witnesses.

The principal sudder ameen, placing reliance on the parole testimony adduced by the plaintiff, decreed the original sum, but refused the interest claimed under the provisions of Act XXXII. of 1839.

Dissatisfied with this judgment, both parties appealed to this court, the defendant to be absolved *in toto*, the plaintiff to recover the disallowed interest.

In my opinion the decision of the lower court is incomplete, inasmuch as the account books of the plaintiff (who has various pecuniary transactions) were never called for, and which would assist us materially in coming to a right judgment on this case, as would also the original petition shewing the grounds on which the plaintiff prayed that the sale might be stopped in August 1840.

In order therefore that these documents may be brought forward and considered by the court, I remand the case for re-trial, reversing the judgment of the principal sudder ameen, and decreeing both appeals. The usual orders passed for refund of stamp value.

THE 10TH NOVEMBER 1846.

PRESENT: HENRY BROWNLOW, JUDGE.

No. 20 of 1845.

Appeal from the Principal Sudder Ameen.

Mr. J. Atkinson, (Plaintiff,) Respondent,

versus

Mosummat Goura Pat Maha Dey, (Defendant,) Appellant.

THE following is a brief outline of this case.

On the 11th November 1840, a 2 annas share of thanah Alumgeer, pergunnah Ultee, was sold by order of court in satisfaction of a decree obtained by one Gujraj Sing *versus* Ram Kishen Beer Bur Jugdeb Mahapatur. This property was bought by Doorgapersaud Pundit for 1175 rupees, and apparently re-sold by him for 1280 rupees on the 28th of the same month, the deed of sale being drawn out in defendant's name, who is the mother of Ram Kishen.

On the 14th January 1841, Ram Kishen borrowed from the present plaintiff the sum of 900 rupees, mortgaging the whole 16 annas of this zemindaree to him; this sum not being paid, a suit (No. 14809) was instituted in court by the plaintiff, and he obtained a decree for 1046 rupees, 15 annas, 4 pie, on the 14th June following. About this time 14 annas of this property were sold in satisfaction of sundry decrees, and eventually the whole 16 annas were disposed of at auction for arrears of Government revenue, when, the state demand having been satisfied, the surplus proceeds of 14 annas of the zemindaree, were allotted to the liquidation of sundry decrees, and the remaining 2 annas surplus proceeds continued as a deposit in the collectorate.

The plaintiff and others then petitioned to have this sum also attached and divided in satisfaction of their decrees, but, owing to objections put in by defendant, their claim was disallowed and they were then referred to a regular suit.

The present case then is instituted in consequence of that order, with a view of proving that defendant's claim to the surplus proceeds of the 2 annas share above noticed was fraudulent, and that the deed on which she based her objections in the miscellaneous case was merely a "benamee" transaction between mother and son.

The defendant on the other hand pleads that the purchase made by her of 2 annas of this property was a *bonâ fide* one, in her own name and with her own funds; consequently that Ram Kishen her son had no right nor interest whatever in the same, and that she is in no way responsible for his debt.

The principal sudder ameen, distrusting the evidence of the subscribing witnesses to the deed of sale, which went to prove the defendant's plea, and deeming the purchase to have been a "benamee" one *ab initio* most satisfactorily established, as also the payment for the same to have been made with funds furnished by Ram Kishen himself, having the deed however drawn out in his mother's name, gave a decree in plaintiff's favor on the 16th September 1845.

I entirely agree with the principal sudder ameen in the view which he has taken of this case. It is clearly proved in my opinion that the purchase originally made by Doorgapersaud Pundit on the 11th November 1840, was by the order and with the funds of Ram Kishen himself, and the subsequent pretended transfer of this property by sale to the defendant was merely a "ruse" on the part of Ram Kishen to defeat his other creditors; and looking upon him therefore to have been the *bonâ fide* proprietor of this 2 annas share and not his mother, I uphold the principal sudder ameen's decision, and dismiss the appeal with costs.

THE 11TH NOVEMBER 1846.

PRESENT: HENRY BROWNLOW, JUDGE. •

No. 21 of 1845.

Appeal from the Principal Sulder Ameen.

Mr. J. Atkinson, (Plaintiff,) Appellant,

versus

Ekadusee Torai and 24 others, (Defendants,) Respondents.

PLAINTIFF sued, on the 3d January 1845, for the recovery of rupees 956-10-9, principal and interest on account of fifteen days

advances, made by him to defendants (as per receipt dated the 21st August 1840); they engaging to serve him in the transport of his salt by sea, for the year 1840-41, which agreement they failed to fulfil in consequence of their absenting themselves when required.

Defendants admitted that they had received fifteen days' advances, and had been entertained by plaintiff as his servants to serve in the transport of his salt by sea, &c., which duty they were quite ready to perform, in proof of which that they continued waiting in the Damurpore river for the salt until May 1841, by order of plaintiff; but as he was unsuccessful in obtaining the Government contract, they were of course unable to fulfil their agreement. Moreover that they had a claim against plaintiff for balance of wages due to them, to defeat which the present suit was now instituted.

The principal sudder ameen dismissed the case on the 17th September 1845, inasmuch as it clearly appeared that the defendants were in attendance in the Damurpore river, by order of the plaintiff until May 1841, waiting for their cargo, and consequently were unable to take service elsewhere. That plaintiff himself moreover failed in getting the Government contract, for the transport of salt for 1840-41, consequently that his plea that defendants were not in attendance to receive the same must fall to the ground. Moreover that plaintiff tried every office and board in appeal to obtain the contract, and that while these appeals were undecided, it was very unlikely that he would have parted with his crews. It is true, he adds; that the salt was not transported by the defendants for which they obtained advances, but the non-fulfilment of this part of the contract was not attributable to any bad faith on their part, and that therefore under the circumstances of the case they were fully entitled to the same remuneration as if the voyage had been completed. Four years moreover had elapsed from date of advances made by plaintiff to that of institution of suit.

This decision in my opinion is in every way just and equitable, and I see no grounds whatever for admitting an appeal. I therefore confirm the judgment of the principal sudder ameen, dismissing the appeal with costs.

THE 11TH NOVEMBER 1846.

PRESENT: HENRY BROWNLOW, JUDGE.

No. 23 of 1845.

Appeal from the Principal Sudder Ameen.

Rugoonath Saontra *alias* Rugoonath Sowaeen, (Plaintiff),
Appellant,

versus

Jugbundoo Mahapatur and others, (Defendants,) Respondents.

THE plaintiff sued on the 22nd April 1844 for possession on a 5 as., 6 gs., 2 cs., 2 cs. share of mouzahs Jaonkote, &c., pergunnah Somra, with mesne profits from 1241 to 1250 inclusive, laying his suit at rupees 1,395-13-5, on the plea that this zemindaree, together with the mokuddumee of mouzahs Anundpore and Baleetota, had been acquired and left by his father Unkoor Sowaeen; adding that the mokuddumee of these two latter villages had been divided in his father's lifetime in equal shares between himself and brothers, and that he conjointly with them held possession also in the zemindaree after his father's death until 1241, but that, with the exception of 8 annas of mouzah, Sunkordah, one of the villages of the zemindaree, he has been dispossessed of the rest; to recover which he now sues.

Prandhun Sowaeen in his answer admits the justice of plaintiff's claim. Jugbundoo on the other hand, supported by the rest of the defendants, states that the property acquired and left by his grandfather, was as follows, viz:

Mouzah Jaonkote,	} constituting the zemindaree,
Inda,	
Sunkordah,	
Munjaree,	
and Mouzahs Anundpore,	} constituting the mokuddumee,
Baleetota,	

as also another estate called Goteda, pergunnah Mutkudnagur. That by a certain deed of partition having for a date one corresponding with the 2d April 1818, made by his grandfather, 5 annas of the mokuddumee of Anundpore and Baleetota, and 8 annas of mouzah Sunkordah, were allotted to the plaintiff, as also 8 annas of mouzah Goteda; and that from that period plaintiff has had separate possession invariably of the above, as well as Prandhun and Lokenath of the respective shares which fell to their lot by the deed of partition; consequently that plaintiff has no right whatever to the property for which he now sues.

The principal sudder ameen dismissed the case on the 18th November 1845, because it clearly appeared to him that plaintiff had never had possession on any of the property constituting the zemindaree since 1225, (or 1818,) with the exception of 8 annas of mouzah Sunkordah, for which he does not now sue; that he has been entirely separate and distinct in house and land from his brethren since that period; and that it is to be inferred that he consented to receive the 8 annas of mouzah Sunkordah in lieu of any claim, which he might have to the other property constituting the zemindaree. He therefore considered the plaintiff barred now by the law of limitation.

I agree with the principal sudder ameen entirely in thinking that there is no trustworthy evidence adduced on which we could determine that the plaintiff has ever had possession within twelve years antecedent to the institution of this suit, on the property for which he now sues. Under the law of limitation therefore he is now barred, and I accordingly dismiss the appeal with costs, and affirm the decision of the lower court.

ZILLAH DINAGEPORE.

THE 2D NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 46 of 1846.

*Appeal from the decision of Radhamohun Chowdhry, Moonsiff of
Rajarampore.*

Chundun Das, (Plaintiff,) Appellant,

versus

Luky Kunt Das, Nobai, and Musst. Sree Mutty, (Defendants,) Respondents.

CLAIM, rupees 147-10-10, due on an "ikrar" for rupees 83, dated the 7th Assar 1246 B. S., given by Luky Kunt, and Gour, (deceased,) uncle of Nobai and father of Musst. Sree Mutty, for the balance due on account of 5 gold mohurs given by the plaintiff to the said "Gour," deceased, to be converted into a neck ornament. The defendant Luky Kunt denies the "ikrar" and gold mohur transaction altogether, and asserts that the suit was got up in the name of the plaintiff by a neighbour with whom he is at enmity. "Nobai" denies his liability on account of his deceased uncle, and adds that the said uncle gave the "ikrar" and subsequently gave Luky Kunt the amount due on it to pay to the plaintiff. Sree Mutty is not forthcoming. The moonsiff dismissed the case on the grounds detailed at great length in support of the suit being a false one, in which I concur, and therefore confirm the moonsiff's decision under Clause 3, Section 16, Regulation V. of 1831.

THE 2D NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 269 of 1845.

*Appeal from the decision of Radhanath Sircar, Moonsiff of
Gourgureeba.*

Keenoo Imam Bux, (Defendant,) Appellant,

versus

Issur Chunder Chowdry, (Plaintiff,) Respondent.

CLAIM, rupees 63, principal and interest due on a bond for rupees 62, dated the 5th Jyete 1248 B. S., in favor of the plaintiff's father. Defendant states that the bond and payments on account of it are fictitious; that on the date of the bond he was out with the plaintiff's

father on a hunting expedition, and that the suit has been brought against him because he gave evidence against the plaintiff in a case of assault and battery in which the plaintiff was fined 200 rupees. In his reply the plaintiff denies generally the assertions of the defendant. The moonsiff decreed the case on the evidence for the plaintiff, the defendant having failed to produce his witnesses, his assertions being unproved and false, and further delay therefore in the moonsiff's opinion improper. The defendant was a "peada" in the service of the plaintiff and his father. No reason for so large an advance to him is given. The defendant's endeavours to produce the plaintiff's respectable servants and books to prove the bond and payments fictitious, have been frustrated. Shortly after the defendant had given evidence against the plaintiff, he was forced to seek the protection of the magistrate against his oppression, and three of his brother witnesses were seized on a false charge of theft. Under such circumstances I do not consider the bond, or the witnesses in support of it, entitled to any credit, especially as the latter are all subordinate servants of the plaintiff, and their evidence far too minute as to position, movements, and the rich zemindar giving the money with his own hands, to be credible after a lapse of some four years. At the same time there is no evidence to the four asserted payments, viz. two in cash and two deductions from the peada's pay, which was most essential in such a case. On the above grounds I reverse the moonsiff's decision, dismiss the plaintiff's claim, and decree the appeal with costs.

THE 3D NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 64 of 1846.

Appeal from the decision of Bydnath Surma, Moonsiff of Sheebgunge.
Ashruf Zuma Chowdry and others, (Plaintiffs,) Appellants,

versus

Burkut Sheik, (Defendant,) Respondent.

CLAIM, rupees 59-2, being value of mangoes on 47 trees in 1251, minus 9 rupees paid by the defendant with the usual interest. Defendant states that on the plaintiff agreeing to take 9 rupees' rent and "salamee" for the said mango trees and 4 beegahs 4 cottahs on which they stand, he paid the amount, gave his "kaboolet," and the "pottah" was being prepared when the plaintiff heard of a disturbance in his village, for which he forthwith started promising to give the "pottah" next day. The moonsiff dismissed the case on the grounds that the plaintiff's witnesses did not prove his case, speaking simply to having on one occasion seen the defendant removing the mangoes, quantity and value unknown: the improbability of a ryot forcibly taking mangoes as stated, and the want of any document to shew the value

of the mangoes to have been rupees 62-8, which was to be looked for if 9 rupees of that amount had been paid by the defendant. Under Clause 3, Section 16, Regulation V. of 1831, I confirm the moonsiff's decision.

THE 3D NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 65 of 1846.

Appeal from the decision of Ramnarain Rai, Moonsiff of Puteeram.

Syud Zoolfakeer Ally, (Defendant,) Appellant,

versus

Eedoo Moollah, (Plaintiff,) Respondent.

CLAIM, rupees 140-8, due on a bond for rupees 100, dated the 14th Falgoon 1247 B. S. Defendant pleads that in lieu of money plaintiff gave him orders for rupees 75 which were not honored, and that rupees 25 at the time due to the plaintiff were subsequently recovered by him, and further that on the same day he gave another bond for 100 rupees on which the plaintiff obtained a decree against him. The moonsiff decreed the case on the evidence for the plaintiff, the defendant having failed to produce his witnesses or other proof. There was great delay on the part of the defendant in filing his answer, and before he did so the evidence of the plaintiff's witnesses was taken. He was afterwards on three occasions allowed seven days, two days, and one day, to produce his proof, and his excuse for failing to do so is frivolous, but as it appears that two bonds were given by him on the same day to the plaintiff, who has recovered on one of them, and the witnesses in this case speak only as to one bond, I remand the case for revision.

THE 4TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 48 of 1846.

Appeal from the decision of Radhanath Sircar, Moonsiff of Gourgureeba.

Lukmeer Khan, zemindar, and Dulput Khan, (Defendants,) Appellants,

versus

Fool Chund Mundul and others, (Plaintiffs,) Respondents.

CLAIM, rupees 292-9-3, value of crop on 192 beegahs, forcibly taken by the defendants. The defendants deny having taken the crops, and the first asserts that the land alluded to belongs to his estate, and that he was about instituting a suit for possession of it,

which had been awarded under Act IV. of 1840 to the zemindar of the plaintiffs, when they filed the present one. The moonsiff decreed only rupees 197-11, as the value of the crops cut by the plaintiffs and forcibly taken away by the defendants, disallowing the claim for the standing crop said to have been subsequently taken by them, as the witnesses in the magistrate's court had spoken only to the removal of the cut portion. On the 25th October 1843, the plaintiffs were ousted and their crops carried off. On the 12th February 1844, the joint magistrate upheld the possession of the defendants, and on the 17th April following, the land in dispute was restored to its owner by order of the sessions' court. Under such circumstances the moonsiff's ground for disallowing the value of the crop uncut when the cut portion was taken, is absurd, and the defendants are decidedly not the persons aggrieved by his decision. This suit was no bar to the institution of a suit for possession by the defendants, and the award under Act IV. of 1840 being still in force, I see no reason to interfere with the decision of the moonsiff on the appeal of the defendants. I therefore dismiss the appeal with costs.

THE 5TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 153 of 1846.

Appeal from the decision of Radhamohun Chowdhree, Moonsiff of Rajarampore.

Neelkunt Mundul and Gour Mundul, (Defendants,) Appellants,
versus

Beebee Rujub and Beebee Zeinub, (Plaintiffs,) Respondents.

CLAIM, rupees 191-6-2, due for 1249 B. S., by Kulwa Sircar, putwaree, and his sureties. The putwaree pleaded payment in full, but has not appealed against the moonsiff's decree. The appellants deny having been sureties, one of them adding that he can write and would have signed the bond had he been so, and urged that the security bond filed by the plaintiffs only binds the sureties to produce the putwaree who attended in the courts of the collector and moonsiff. The security bond binds the sureties to produce the putwaree if necessary, and to make good all demands against him. It was proved by witnesses; and the appellant who urges his being able to write did not attend when required to do so by the moonsiff. The signatures on other documents do not make it probable that the said appellant was able to sign his own name when the bond was given. Under Clause 3, Section 16, Regulation IV. of 1831, I confirm the moonsiff's decision.

THE 5TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 154 of 1846.

Appeal from the decision of Mahatabooddeen, Moonsiff of Kulliaunge.

Loodun Beebee, (Plaintiff,) Appellant,

versus

Cheemun Mundul, (Defendant,) Respondent.

CLAIM, rupees 240, due on a bond dated the 2d Sawon 1248, for rupees 125. Defendant pleads payment in full according to four receipts. The moonsiff dismissed the case on the grounds of the evidence and receipts on the part of the defendant, and the payments on the bond being evidently entered to evade the rule of limitation and being inconsistent to the evidence of the plaintiff's witnesses. Under Clause 3, Section 16, Regulation V. of 1831, I confirm the moonsiff's decision.

THE 7TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 78 of 1846.

Appeal from the decision of Mahomed Nazim, Moonsiff and Sudder Ameen of Maldah.

Madool Chunder Das, (Plaintiff,) Appellant,

versus

Bunk Beharee and others, (Defendants,) Respondents.

CLAIM, rupees 218-14-9, due on an "ikrar," dated the 19th Bhadoon 1249, for rupees 102-10. The moonsiff dismissed the case on the ground that the sale of the said bond to the plaintiff was illegal, and I therefore remand the case for revision.

THE 9TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 163 of 1846.

Appeal from the decision of Bydnath Surma, Moonsiff of Sheebgunge.

Basoo, (Defendant,) Appellant,

versus

Doomun, (Plaintiff,) Respondent.

CLAIM, rupees 53-3-5, due on a bond for rupees 47½, dated the 7th Falgoon 1251 B. S. The defendant pleads the return of the money to the plaintiff at the time the bond was given. The moonsiff decreed the case on the evidence for the plaintiff, not giving credit to

the writer of the bond produced on the part of the defendant, as his evidence was contradictory of the defendant's answer. The defendant urges that the witnesses who gave evidence in favor of the plaintiff are his dependants, and wishes to have the benefit of the evidence of the fourth witness to the bond (not produced by the plaintiff) and another person who was also present at the transaction. The defendant's answer is most concise, apparently from the carelessness or laziness of his wakeel, but there is no discrepancy between it as explained in appeal and the evidence of the writer of the bond. He states that the bond was for rupees 47½, and that only rupees 14½ were paid, the remaining 33 rupees being made up by the transfer three times of 11 from the defendant through a witness (the plaintiff's brother) to the plaintiff and back again to the defendant, after the writer of the bond, having expressed his astonishment, went away, leaving the parties together. The defendant in his appeal gives the same detail, with the addition that subsequently the 14½ rupees were also returned, the plaintiff saying that he could not give the full amount of the bond on that day, as his son was absent, but that he would do so some other day, which he never did, as the defendant managed to do without the money. Under the above circumstances I think it right that the defendant should have the benefit of the evidence of the other witnesses named by him, and I therefore remand the case for revision.

THE 12TH NOVEMBER 1846.

. PRESENT: JAMES GRANT, JUDGE.

No. 215 of 1846.

Appeal from the decision of Ramnarain Rai, Moonsiff of Puteeram.

Adom (Defendant,) Appellant,

versus

Roopa Bewa, (Plaintiff,) Respondent.

CLAIM, rupees 86½, due on a bond for rupees 57, dated the 22d Bhadoon 1247 B. S. Defendant pleads payment in full. The moonsiff decreed the case on the evidence for the plaintiff, the defendant having failed to produce his proof, though frequently required to do so. The case was instituted on the 26th March, and disposed of the 29th May. The defendant produced his witnesses once, and does not appear to have been to blame for not having done so again, the periods allowed to him for that purpose having been short, and close upon each other. I therefore remand the case for revision.

THE 12TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 236 of 1846.

Appeal from the decision of Radhamohun Chowdree, Moonsiff of Rajarampore.

Lal Chand Das, (Defendant,) Appellant,
versus

Jug Mohun Chowdree, (Plaintiff,) Respondent.

CLAIM, rupees 35-15-10, due on a bond for rupees 24, dated the 26th Jyte 1251 B. S. The defendant denies the authenticity of the bond, asserts that he has never even seen the plaintiff, and that being a man of substance there could have been no necessity for his giving a bond if he had, as stated, to pay the plaintiff for his share of the land in which he had dug a tank. The moonsiff decreed the case on the report of an ameen, supported by the evidence of the witnesses both for the plaintiff and defendant. I approve of the moonsiff's decision, and confirm it accordingly.

THE 13TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 96 of 1846.

Appeal from the decision of Omeschunder Mookerjee, Moonsiff of Putneetullah.

Kumol Lochun Shah, zemindar, (Plaintiff,) Appellant,
versus

Kalidut Laharee, (Defendant,) Respondent.

CLAIM, rupees 178-10-7, enhanced rent, with interest, on 122 beegahs 2½ cottahs, for 1249 B. S., according to a written notice under Regulation V. of 1812, served on the defendant in the month of Bysack 1249. The defendant pleads that he holds only 77 beegahs, 4 cottahs, on a jumma of Sicca rupees 39-5-12, according to an istemraree pottah of 1201, which according to the measurement of the plaintiff's ameen was 79 beegahs, 19½ cottahs, and further that he paid rupees 38 rent for 1249, and obtained a receipt. The moonsiff nonsuited the case on the grounds that though the notice was served in 1249, this suit was not instituted until 1252, and that the land in defendant's possession is 141 beegahs, 18 cottahs, which is greatly in excess of what is sued for. The delay alluded to by the moonsiff is no bar to the suit, and the excess mentioned by him is fully accounted for by 7 beegahs claimed by the defendant as rent free and the usual allowance of 2 cottahs on each beegah as "kucha" or seed ground. I therefore remand the case for revision.

THE 17TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 283 of 1846.

Appeal from the decision of Omeschunder Mookerjee, Moonsiff of Putneatullah.

Deby Das, (Plaintiff,) Appellant,

versus

Bedy Sirdar and others, (Defendants,) Respondents.

CLAIM, rupees 132-13-9, due on a bond for rupees 75, dated the 4th Sawon 1247 B. S. Defendants plead payment as per receipt in full, dated the 21st Assin 1248. The moonsiff dismissed the case on the quittance supported by satisfactory evidence, not being satisfied with the evidence for the plaintiff intended to make out against the defendants forgery and an offer to pay at the same time. I approve of the moonsiff's decision, and confirm it accordingly.

THE 18TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 294 of 1846.

Appeal from the decision of Pundit Nurhurree Seeromonee, Moonsiff (and Sudder Ameen) of Maldah.

Jhapra, (Defendant,) Appellant,

versus

Kaloo Sheik, (Plaintiff,) Respondent.

CLAIM, rupees 15-2-5, due on rupees 15, lent on the 28th Bysack 1253, payable in eight days.

The defendant denies the loan, and pleads enmity between him and the plaintiff, who is a Mussulman of the new sect, and wished him (the defendant) to join. The moonsiff decreed the case on the evidence of four witnesses for the plaintiff, without allowing the defendant an opportunity of proving his assertions. I therefore remand the case for revision.

THE 19TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 296 of 1846.

Appeal from the decision of Radhamohun Choudree, Moonsiff of Rajarampore.

Nazool (Plaintiff,) Appellant,

versus

Huneef and Doonda, (Defendants,) Respondents.

CLAIM, rupees 28-9-8, due on a bond for rupees 15, dated the 15th Jyete 1246, given by Sumboo, deceased. The defendants, (brother

and cousin of the deceased) state that they separated from the deceased some years before his death, and that his widow (also dead) succeeded to his property. The moonsiff decreed the case against the estate of the deceased on the grounds that he had separated from the defendants before his death, and that his widow had succeeded to his property. In appeal it is urged that the defendants are now in possession of the deceased's "jote," or rather his portion of a joint "jote," and in that case they should be held responsible for the plaintiff's claim, especially if, as stated by some of the witnesses, there was no division of the landed property at the time of the separation. This matter which is the main point for decision, has not been sufficiently enquired into by the moonsiff, and I therefore remand the case for revision.

THE 19TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 297 of 1846.

Appeal from the decision of the Moonsiff of Sheebgunge, Bydnath Surma.

Madob Chunder Day, (Plaintiff,) Appellant,

versus

Golabdee Mundul, (Defendant,) Respondent.

CLAIM, rupees 9-2-8, due on 10 rupees advance on the 21st Ager 1250, to be repaid in "kullai" at the rate of 1 maund 30 seers per rupee. Defendant denies the loan, and asserts that this suit was instituted from spite, the plaintiff having been unsuccessful in a bond-case against him. The moonsiff dismissed the case on the grounds of discrepancies in the evidence of the witnesses for the plaintiff, the want of any document in support of the claim, the defendants having been ill at the time the loan is said to have been made, and the fact that a suit of the plaintiff's against the defendant had shortly before been dismissed. I approve of the moonsiff's decision, and confirm it accordingly.

THE 20TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 305 of 1846.

Appeal from the decision of Bydnath Surma, Moonsiff of Sheebgunge.

Inaitoolla and Jamyat, (Defendants,) Appellants,

versus

Sahas Biswas, (Plaintiff,) Respondent.

CLAIM, rupees 30-11-7, due on a bond for rupees 25, dated the 9th Assar 1251 B. S. Defendants deny the authenticity of the bond, and one of them urges that he can write and would have signed a

bond had he given one; that there is enmity between him and the plaintiff regarding a mulberry plantation; and that the plaintiff in the zemindar's cutchery claimed money from him, but allowed that he had no document in support of the demand. The moonsiff decreed the case on the evidence of the witnesses for the plaintiff, and the defendant, Inaitoola's, signature not being such as to make it probable that he could have signed his name six or twelve months back. In appeal it is urged that the defendant, Inaitoola, was absent on the date of the bond, and that this circumstance was by a mistake of the wukeel not stated in the answer. The defendants are entitled to an opportunity of proving their assertions, and the case is therefore remanded for revision.

THE 24TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 320 of 1846.

Appeal from the decision of Nurhurree Seeromonee, Moonsiff (and Sudder Ameen) of Maldah.

Gopal Geer, (Defendant,) Appellant,

versus

Goluk Chunder Das, (Plaintiff,) Respondent.

CLAIM, possession of a drain, and rupees 99-12, for loss of rent caused by plaintiff's remaining tenantless in consequence of the defendant's having extended the enclosure of his compound beyond the said drain. The drain is said to be 40 cubits long by 3 cubits broad, value rupees 15. The rent is stated at 9 rupees per month, and credit is given for rupees 62-4, obtained from tenants who occupied the plaintiff's house after the 9th Maug 1250, when the drain was forcibly taken possession of by defendant. The moonsiff decreed the case "*ex parte*" on the evidence for the plaintiff, and reports by a thana mohurer and ameen.

The appellant urges having been in prison, and therefore unable to file an answer, but it appears that he appointed a wukeel, and it follows that he wilfully neglected to defend the action. I therefore dismiss the appeal under Circular, No. 964 of the 12th March 1841.

THE 24TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 325 of 1846.

Appeal from the decision of Radhamohun Chowdree, Moonsiff of

Soobol Das and Poochoo, (Defendants,) Appellants,

versus

Andaroo Shah, (Plaintiff,) Respondent.

CLAIM, rupees 14-6-6, due on an instalment bond for rupees 14, dated the 17th Phalgeon 1252. The moonsiff decreed the case *ex-*

parte on the evidence for the plaintiff. The appellants plead illness of the whole family, and urge that the bond was forcibly taken from them. The bond purports to be for an old debt of rupees 22, *minus* rupees 8, remitted, the last instalment being payable on the 30th Chyte, *i. e.* within six weeks of date. The suit was instituted on the 14th of Jyte following, *i. e.* in six weeks more, which is rather sharp for a person who remitted more than one-third of what was due to him. The defendants on receiving the usual notice stated their intention of defending the suit; and under the circumstances of the case I see no reason to doubt their plea of illness, and therefore remand the case for revision.

THE 25TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 314 of 1846.

Appeal from the decision of Fuzloolla, Moonsiff of Beergunge.

Gopal Das, (Defendant,) Appellant,

versus

Mote Boolla and others, (Plaintiffs,) Respondents.

CLAIM, rupees 30-5-19g., due on a bond for rupees 17, dated the 11th Sawon 1247 B. S. The moonsiff decreed the case *ex parte* on the evidence for the plaintiff. Appellant pleads ignorance of the usual notices having been served, as he was during the time at Dinagepore in attendance at the foudjaree court, and further that the sum borrowed by him was 7 rupees, which he repaid with 2 rupees interest, as will appear from the plaintiffs' "khata bye," and that the said 7 rupees in the bond have been altered to 17 rupees. The amount entered in the bond has apparently been altered as stated. I therefore remand the case for revision.

THE 27TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 194 of 1846.

Appeal from the decision of Ramnarain Rai, Moonsiff of Puteram.

Gooroopershad Deb, (Defendant,) Appellant,

versus

Huranund Banerjia, (Plaintiff,) Respondent.

CLAIM, rupees 143-10-18g., due on a bond for rupees 108, dated the 10th Bysack 1250. Defendant pleaded the illegal deduction of 8 rupees, as interest in advance and payment of rupees 105, as per letters from the plaintiff and his brother. The moonsiff decreed the

case on the evidence for the plaintiff, the defendants having failed to produce any proof on their part. In appeal it is urged that the other defendant, "Sheebpershad," brother of the appellant, died about a month before the case was decided, and that the appellant, having been absent in consequence, was not aware of the call for proof. Under the circumstances of the case I remand it for revision.

THE 27TH NOVEMBER 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 196 of 1846.

*Appeal from the decision of Pundit Nurhurree Seeromonee, Moonsiff
(and Sudder Ameen) of Maldah.*

Gopykissore Sing, (Plaintiff,) Appellant,

versus

Birjomonee Dassee, and others, (Defendants,) Respondents.

CLAIM, possession of one-fourth of turuf Zajpore, pergunnah Kakjole. The moonsiff dismissed the case under Section 14, Regulation III. of 1793. It appears that the plaintiff was referred to a regular suit by the collector's order, dated the 4th January 1833, and that this suit was instituted on the 26th March 1845, or upwards of 12 years after the said order; but the moonsiff has overlooked the fact a suit was previously instituted by the plaintiff on the 23d of July 1842, which was nonsuited, and this one instituted in lieu of it. Section 14, Regulation III. of 1793, is therefore no bar to this suit, and I remand the case for revision.

ZILLAH HOOGHLY.

THE 3D NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 2 of 1846.

Collector's Appeal.

Gyaram Roy and Haradhun Roy, (Defendants,) Appellants,
versus

Joykissen Mookerjee, Rajkissen Mookerjee, and Prawn Naut
Chowdry, (Plaintiffs,) and

Kooshoo Roy, Shisteedhur Roy, Nobokeyshur Roy, Pearee
Money Dasse, Keenoo Roy, and Thakoormoney Bewa,
(Defendants,) Respondents.

THE claim is to confirm the land in dispute to be lackeraj, the value of it being 1032 rupees, 4 annas, 16 gundahs.

The appellant presented his petition of appeal on the 16th of September 1846, on which day he was ordered to file a copy of the *fysalla* of the collector with which he was dissatisfied. The appellant having neglected to attend to his interests, or obey the orders of this court of the 16th of September 1846, up to this date, a period of more than six weeks: this case is dismissed under Act XXIX. of 1841. The appellant being a pauper and unable to pay the costs, they are remitted.

THE 5TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 11 of 1845.

Principal Sudder Ameen's Appeal.

Joykissen Mookerjee, (Plaintiff,) Appellant,
versus

Bunmallee Ghose and Seboo Ghose, (Ryotts,) Rajkishore Mitter, Pursonoo Mitter, Prawn Zurgur, Gungadhur Bhottacharge, Ram Chunder Bhottacharge, Sreedhur Bhottacharge, Bhoy-rub Chunder Bhottacharge, Hurchunder Bhottacharge, and Kaleepersaud Roy, (Defendants,) Respondents.

THE suit was for damages for defamation, and laid at 5,000 rupees.

From the perusal of the papers in this case, it appears that the appellant instituted an original suit for defamation of character, laying his damages at five thousand rupees. He states in his plaint, that he had measured out the lands of his zumeendaree, in mouzahs Bhowaniepore, &c., within the lot Reedoyrampore, and had commenced fixing a rate of jumma on them, when, at the instigation of the respondents, Gungadhur Bhottacharge and Rajkishore Mitter and others, the respondent Bunmallee Ghose preferred a false charge in the fouzdar court against the appellant, namely, charging him with having made away with his (the respondent's) nephew by name Seeboo Ghose, and disgraced and dishonored him (the appellant) by having his house searched; that the appellant after strict search procured the apprehension of the aforesaid Seeboo Ghose: the magistrate finding the charge against the appellant groundless, dismissed the case and released the appellant, who, in consequence of the magistrate not having punished the person who had made the false charge nor those who had instigated him to do so, preferred an appeal to the session judge, who decided that the appellant was at liberty to institute a civil suit for the defamation of his character.

Sreedhur Bhottacharge and Kalleepersaud Roy in their answers state, that the appellant brought his action against them from enmity towards his ryots, (both parties having instituted many suits against each other regarding the lands,) and to give them trouble and vexation.

The additional principal sudder ameen, Moulvi Mynooddeen Sufdar, dismissed the case on the 27th March 1845, as not proved.

The appellant, being dissatisfied with this decision, preferred this appeal, stating that, notwithstanding there was sufficient evidence, both documentary and verbal, to establish his case, the additional principal sudder ameen had most unjustly dismissed it.

From the depositions of the witnesses for the appellant, the copy of the magistrate's roobokaree, with the darogah's report, and all the circumstances of the case, it is clearly proved that Sreedhur Bhottacharge, Bhoyrobchunder Bhottacharge, Rajkeyshore Mittre, Prosonoo Mittre, and Bunmallee Ghose, respondents, all assembled together at the house of Prosonoo Mittre to consult and take into consideration in what manner they could most annoy and disgrace their zumeendar (the appellant,) when they decided that bringing a charge against him of having made away with Seeboo Ghose would suit their purpose. Accordingly Bunmallee Ghose (one of the respondents) instantly preferred the charge against the appellant to the above purport, namely, of having made away with his nephew, Seeboo Ghose; they also procured a search warrant, and had the house of the appellant searched for the supposed missing person. Seeboo Ghose being subsequently found, the appellant was released, after he had been thus disgraced. I am therefore of opinion

that the decision of the additional principal sudder ameen should be reversed.

Ordered, that the decision of the additional principal sudder ameen, Moulvi Mynooddeen Sufdar, be reversed, and decree damages, to the extent of five hundred rupees, against Sreedhur Bhattacharge, Bhoyrubchunder Bhattacharge, Rajkeyshore Mittre, Prosonoo Mittre, and Bunmallee Ghose, the respondents, having taken into consideration their circumstances and position in life. The costs of both courts are to be paid by the above named five respondents, according to the extent of the sum decreed by me.

THE 5TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 12 of 1845.

Principal Sudder Ameen's Appeals.

Joykissen Mookerjee, (Plaintiff,) Appellant,

versus

Govindo Geery, Rajkeyshore Mittre, Prawn Zurgur, Gungadthur Bhottacharge, Ram Chunder Bhottacharge, Hur Chunder Bhottacharge, Bhoyrub Chunder Bhottacharge, Sreedhur Bhattacharge, Kaleepersaud Roy, and Prosonoo Mittre, (Defendants,) Respondents.

THIS suit was for damages for defamation of character, and laid at five thousand rupees.

It appears on the perusal of the papers of this case that the appellant instituted an original suit before the additional principal sudder ameen for defamation of character, laying his damages at five thousand rupees.

The appellant states in his plaint that he had measured out the lands of his zumeendaree in the mōuzahs Bhowancepore, &c. within the lot Rheedoyrampore, and had commenced fixing a rate of jumma on them, when, on the instigation of Gungadthur Bhottacharge and Rajkeyshore Mittre, &c. respondents, Govindoo Geery preferred a false charge in the fouzduary court against the appellant, namely, of having murdered the father of Seeboo Geery, who had died of cholera morbus, and thus defamed and dishonored him, the appellant, by having his house searched; the appellant was subsequently released by the magistrate, &c.

Sreedhur Bhottacharge and Kaleepersaud Roy state in their replies that the appellant brought this action against them from enmity towards his ryots, (both parties having instituted many suits against each other regarding the lands,) and to cause them trouble and vexation.

The additional principal sudder ameen, Moulvi Myenooddeen Sufdar, dismissed the case on the 26th of March 1845, on the ground that the fact of the appellant and his servants having forcibly and illegally seized and confined Seeboo Geery, father of Govindoo Geery, the respondent, was clearly proved, for which they were fined by the magistrate, consequently the appellant's claim for damages had not been proved.

The appellant, being dissatisfied with this decision, preferred this appeal, stating that, notwithstanding the case had been clearly proved, both by documentary and verbal evidence, the additional principal sudder ameen Moulvi Myenooddeen Sufdar had unjustly dismissed it.

After a careful perusal of all the papers of the nuthee, and under all the circumstances of the case, I see no reason to disturb the decision of the additional principal sudder ameen; therefore it is ordered, that this appeal be dismissed, and the decree of the additional principal sudder ameen, dated March the 26th 1845, be confirmed. The costs are to be paid by each party respectively, the respondent, Shreedhur Bhottacharge, having appeared unsummoned.

THE 7TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 14 of 1845.

Principal Sudder Ameen's Appeal.

Joykissen Mookerjee and Rajkissen Mookerjee, Attornies for Beejkissen Mookerjee, a minor, joint Zumeendar of an eight annas share, and Putnee Talookdar of an eight annas share of Lot Paundra, (Plaintiffs,) Appellants,

versus

Seebchunder Banoorjee, son of Ramdhon Banoorjee, Juggutbullub Chowdhery, Bissonaut Chowdhery, Bhoyroop Chunder Chowdhery, Bonmallee Chowdhery, Kettranaut Seal, and Juggernautpersaud Mullick, (Defendants,) Respondents.

THE original suit was to confirm a tank and its embankment in dispute, as mail property, and for possession of the same, to the extent in all of nine beegahs and seven cottahs, valued at seven hundred and five rupees, nine annas, eleven gundahs, and two cowries.

From the perusal of the principal sudder ameen's fysullah and the grounds set forth in the petition of appeal, with all the papers of the original suit, it appears that the appellants claimed a tank called Radhabullub, with its embankments, as mail property, situated in the village of Kistoopoore within the lot Paundra.

The same tank being declared by the Chowdheries (the respondents) who held possession of it, to be lackeraj.

Kettranaut Seal in his answer states, that the tank in dispute is situated in the village Pathoon, within his zumeendaree of lot Chaustrah.

The principal sudder ameen, Roy Radhagovind Shome, admitted the statement of Kettranaut Seal to be the correct one, and dismissed the case on the grounds set forth in his *fysallah*. It appears that the papers of the local enquiry and investigation were not personally filed by the ameen on oath, in the court of the principal sudder ameen, which they ought to have been, according to law; therefore they cannot be admitted as legal evidence; consequently, I decree this appeal and reverse the decision of the principal sudder ameen dated March 26th 1845. The nutce of the original suit to be returned for retrial to the present principal sudder ameen (James Reily, Esq.), with instructions, that the case be restored to its original number on the file of the principal sudder ameen, and a local enquiry touching the property in dispute be made by the established ameen of his court according to law.

The respondent, Kettranaut Seal, having appeared unsummoned, is to pay his own costs; and the appellants to pay their costs for the present, and which costs hereafter will be defrayed by the losing party, and the value of the stamp on the petition of appeal to be refunded to the appellant.

THE 12TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 15 of 1845.

Principal Sudder Ameen's Appeal.

Gunganarain Ghose (on his demise) by Korooneedhur Ghose,
his son, (Plaintiff,) Appellant,

versus

Ramchand Ghose and others, (Defendants,) Respondents.

THE original suit was for the possession of a tank, with damages for the loss of fish, &c. laid at one thousand and fifty-one rupees and eight annas.

The appellant, being dissatisfied with the decision of the principal sudder ameen, Roy Radhagovind Shome, appeals, to procure the repossession of a tank with the damage for loss of fish, &c. as laid in the original plaint at rupees one thousand and fifty-one, annas eight.

All the papers, both in the original plaint, and in this appeal case, show that the plaintiff, Gunganarain Ghose, was in possession

of a lackeraj tank, which had been dug by his grandfather, and of which the aforesaid Gunganarain Ghose had been dispossessed by the defendants, Ramchand Ghose and others, on the 12th Bysack 1239 B. S.

The defendants, Ramchand Ghose, Neelmonee Ghose, and Gunnesh Chunder Ghose, state in their answer, that the tank in question is within the thirty-five beegahs and two cottahs of their hereditary lackeraj land, and that they are now in possession of it, the aforesaid tank in dispute, jointly, as an undivided family.

The order passed by the principal sudder ameen, Roy Radhagovind Shome, dated the 31st of December 1844 A. D., directing a local enquiry to be instituted regarding the thirty-five beegahs and two cottahs of land, &c. has never been carried into effect, nor has the principal sudder ameen passed any order on the petition filed by the plaintiff on the 27th of February 1845 A. D., praying, that from and out of the fees already paid into court, another ameen, or any of the officers of the court of the principal sudder ameen, might be deputed to carry out and complete the local enquiry which had been ordered to be instituted on the 31st of December 1844, A. D. Roy Radhagovind Shome, the principal sudder ameen, does not allude to these important points in this case in his decision, but dismisses the case on the 23rd of April 1845 A. D., on the grounds set forth in his *fysillah* of that date.

From the above-mentioned facts it is clear that a local enquiry is absolutely necessary, not only for the satisfaction of the parties, but to enable the court to render substantial justice to the litigants, for in the present position of the case, the decision on it is incomplete. Therefore it is ordered that this appeal be decreed, and the decision of the principal sudder ameen, Roy Radhagovind Shome, dated April 23rd 1845, A. D., be reversed; and that the case be remanded to the present principal sudder ameen, James Rcily, Esq., for re-trial, after he had restored it to its original number on his file, and after he had deputed one of the officers of his court to make the necessary local enquiry.

Costs to be paid by each party respectively for the present; on the final decision of this case, the costs to be paid by the losing party.

The value of the stamp on the petition of appeal to be refunded to the appellant.

THE 12TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 18 of 1845.

Principal Sudder Ameen's Appeal.

Rance Indranee Debea, (Defendant,) Appellant,

versus

Sheikh Kadir, Pauper, (Plaintiff,) Respondent.

THIS claim is for possession of ancestral nuzooraut lackeraj land, with damages for loss, laid at Company's rupees 2747, 2 annas, 13 gundahs.

From the persual of the papers of this case it appears that the respondent in his plaint states, that he possessed eleven beegahs and four cottahs in the village Shomoshpore, and ten beegahs and five cottahs in the village Sholebagah, making a total of twenty-one beegahs and nine cottahs of nuzooraut lackeraj land, hereditary property, which by the khalsea measurement becomes twenty-four beegahs and one cottah; that in the year 1236 B. S., the defendants, Prankystoo Chowdry and Seeboopersaud Chowdry and others, had forcibly dispossessed him of ten beegahs and fifteen cottahs out of the land situated in the village Shomoshpore, and of ten beegahs and thirteen cottahs in the village Sholebagah, making a total of beegahs twenty-one and cottahs eight, for the re-possession of which, with damages for loss, he instituted a suit according to Regulation XXVIII. of 1814, as a pauper.

The defendant, Seeboopersaud Chowdry, in his answer denies having dispossessed the respondent; but admits that he had purchased four beegahs and three cottahs of lackeraj land, situated within the village Sholebagah, for the sum of forty-two rupees from the respondent and his brothers, &c. in the month of Assaur 1241 B. S., and that he holds possession of the land at this time. The defendant, Dwarkanauth Tagore, states in his answer that he does not hold any nuzooraut land in the village Shomoshpore, that the land in dispute within the village aforesaid is land which pays rent, and the revenue of it is regularly paid.

The defendants, Sheikh Sufdar, Sheikh Teetoo, Sheikh Hunneef, Sheikh Saadut, Sheikh Bhola Midha, Sheikh Suleem, make the same answer as Dwarkanauth Tagore.

The defendant, Horryhur Chowdry, in his answer states, that the father of the respondents had sold to the father of Horryhur Chowdry, one beegah and twelve cottahs of lackeraj land, the land aforesaid being situated within the village of Shomoshpore, for the sum of twenty-five rupees, and that he (the father of the respondents) mortgaged two beegahs and ten cottahs of land, situated within a village called Sholebagah, for the sum of rupees thirty-two.

Ranee Indrance, in her answer, states, that she had in the year 1250 B. S. purchased a nine annas and twelve gundahs share of the zumeendaree pergunnah Mundleghaut from Dwarkanauth Tagore.

To ascertain whether the land in question is rent-free (lackeraaj) or rent-paying (maul,) the case was sent to the collector according to Regulation II. of 1819, who reported that the copy of the taidaud filed by the respondent, was a fabricated and forged document, and that the taidaud aforesaid did not tally with the original taidaud; that the omlah of the collector's office who had given the copy of the aforesaid document, and signed it, were dead; moreover, that the original taidaud alone, and unsupported by other evidence, was not sufficient proof that the land in question was rent-free (lackeraaj.)

The principal sudder ameen, Roy Radhagovind Shome, decreed on the grounds set forth in his fysallah, that eleven beegahs and four cottahs only of lackeraaj nuzooraut land, situated within the village called Shomoshpore, belonged to and were the property of the respondent, stating that there was not any mention made in the original taidaud of any land being situated within the village called Sholebagah.

The appellant, being dissatisfied with the decision of the principal sudder ameen, preferred this appeal, on the grounds that the copy of the taidaud filed by the respondents, shews there are ten beegahs and five cottahs of land situated within the village called Sholebagah, but that in the original taidaud, of which a copy was filed by the respondent, no mention is made of any land being situated within the village called Sholebagah; therefore the question whether of the two documents is correct has not been enquired into, nor decided by the principal sudder ameen; that no investigation was made touching the forgery; that the char filed by the respondents does not shew by whom it was granted, consequently it cannot be admitted as evidence, &c.

The copy of the taidaud No. 28240 filed by the respondent shews, that there are eleven beegahs and four cottahs of land situated within the village of Shomoshpore, and ten beegahs and five cottahs within the village called Sholebagah, but on comparing that copy aforesaid of the taidaud, with the original document, called for and brought from the collector's office, I find the name of the village called Sholebagah is not mentioned in that original document, that only eleven beegahs and four cottahs of land, as being situated within the village called Shomoshpore, are entered in it, consequently there can be no doubt, that the copy of the aforesaid taidaud filed by the respondent is a forged document.

The collector in his report states, that the omlah of his court, who had given the copy aforesaid and signed it as such, viz. as a

copy of the taidaud No. 28240, were dead; but as the respondent must have been aware, when he filed his copy of the taidaud, that it was a forged or fabricated, and not a true copy of the original taidaud No. 28240, he ought to be committed to the sessions to be tried according to law.

The principal sudder ameen having decreed that the eleven beegahs and four cottahs of land in the village called Shomoshpore belong, and are the property of the respondent, solely on the ground that the same is mentioned in the original taidaud, appears to me to be insufficient and unjust, because the respondent has not filed any original sunnud or document to support and establish the fact, that the aforesaid land was lackeraj nuzooraut; and therefore the unsupported taidaud alone was not sufficient proof.

The char filed by the respondent dated the 9th Aghun 1194 B. S. does not shew *by whom* it was granted, and moreover, it is evident that it is newly written on *old* paper, and it is from that char alone that eleven beegahs and *nine* cottahs of land appears as situated on Shomoshpore, whereas, in the plaint of the respondent, and the taidaud, eleven beegahs and *four* cottahs of land is stated to be situated within the aforesaid village called Shomoshpore; consequently, I consider the char to be a document of no value. Therefore it is ordered, that this appeal be decreed, and the decision of the principal sudder ameen, Roy Radhagovind Shome, be reversed, dated April 21st 1845: the costs of both courts to be paid by the respondents, and the investigation of the forgery will be the subject of another case according to law.

THE 12TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 32 of 1845.

Principal Sudder Ameen's Appeal.

Gungapersaud Ghose, (Defendant,) Appellant,

versus

Abbool Hoossein Khan, Agha Mohummud Eeoosoof in the place of Hadee Ali Khan, (Plaintiffs,) Ameeroonissa Begum, Moosahib Ali Khan *alias* Teetoo Meeah, Rezza Ali Khan *alias* Hindoo Meeah, Buxee Khanum, Kullub Ali Khan *alias* Nunna Meeah, and Rajkisto Paul, (Defendants,) Respondents.

THIS claim was for costs of suit in No. 145 amounting to Company's rupees six hundred and two, annas four.

From the fysalla of the original case and the grounds set forth in the petition of appeal, it appears that in a case of execution of decree No. 64 in favor of the appellant, a four annas share of talook Goondulpara was sequestered, when the respondents, Abbool Hoossein Khan and Hadee Ali Khan, put in their claim

for the same, namely, for the four annas share of talook Goondulpara, which having been rejected they instituted a suit No. 145, for the reversal of that order passed in the summary case, estimated at Company's rupees two thousand and seventy-nine, annas seven, gundahs fifteen.

The additional principal sudder ameen, Moulvi Mynooddeen Sufdar, dismissed the case on the grounds set forth in his fysalla dated August the 30th 1845, ordering at the same time that the costs of both parties be realized from the said talook; and that endorsed on the wakalutnamah filed by the appellant in the original suit the sum of Company's rupees ninety-six is written as the amount settled for the remuneration of three wakeels, but in the detailed list in the additional principal sudder ameen's fysalla the sum of Company's rupees sixty-four is that which is allowed, and hence the appellant, Gungapersaud Ghose, preferred this appeal.

On the examination of the wakalutnamah filed by the original appellants in the original suit, it clearly appears that the correct sum for the amount of the fees of the wakeels has not been entered in the detailed list in the fysalla of the additional principal sudder ameen, which omission is distinctly a clerical error, which error the appellant, Gungapersaud Ghose, could have procured to be rectified by presenting a miscellaneous petition; instead of doing which, he has preferred this appeal, which is decidedly wrong and erroneous.

The appellant considering the orders passed by the additional principal sudder ameen, Moulvi Mynooddeen Sufdar, regarding the costs of both parties to be realized from the talooks to be unjust, and soliciting to have the amount decreed in his favor, realized from the talook in dispute, and his costs to be defrayed from the profits of the talook aforesaid, are points which cannot be granted or admitted: therefore I dismiss this appeal with costs of this appeal.

THE 12TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 37 of 1845.

Principal Sudder Ameen's Appeal.

Rajkisto Paul, (Defendant,) Appellant,

versus

Abbool Hoossein Khan, Mootawullee, (Plaintiff,) Respondent,

Gungapersaud Ghose, Ameeroonissa Begum, Moosaheb Ali Khan *alias* Teetoo Meeah, Rezza Ali Khan *alias* Hindoo Meer, Buxee Khanum, wife of Imdaud Ali Khan *alias* Ucha Meeah, and Kullub Ali Khan *alias* Nunna Meeah, (Plaintiffs,) Respondents.

No allusion having been made in the fysalla No. 145, respecting the objections offered by the appellant in that case,—in order

to prevent any impediment to his rights in future, he has preferred this appeal, calculated at rupees two thousand and seventy-nine, annas seven, gundahs fifteen.

In this case the appellant had filed a razeenamah, and the respondent, Gungapersaud Ghose, a saffeenamah, soliciting that the case might be considered as settled out of court; but as the appeal case No. 33, preferred by the original plaintiff, Abbool Hossein Khan, was then pending before the court, no order could be passed in the case.

It now appears that the case of appeal No. 33 of 1845, A. D., was dismissed on the 31st of October 1846, A. D., under the provisions of Act XXIX. of 1841, consequently, it is unnecessary to pass any orders in this case.

The appeal therefore is dismissed according to the "razeenamah" of the appellant, Rajkisto Paul, and the "saffeenamah" of the respondent, Gungapersaud Ghose, without injury to the rights and interest of the other respondents. The value of the stamp paper to be returned to the appellant, and the costs to be paid by each party respectively.

THE 12TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 34 of 1845.

Principal Sudder Ameen's Appeal.

Ranee Katteaonce, (Plaintiff,) Appellant,

versus

Radhamohun Chowdry and Bromoo Moye Dehbee, wife of Tarnee Churn Haldar, (Defendants,) Respondents.

THIS claim was for one thousand and seven rupees and twelve annas, damages and interest.

The appellant sued the defendants for the Shyraud of Govindo Gunge, viz. at 3698 rupees, 4 annas, annually, stating in the plaint that the defendant, Radhamohun Chowdry, had received 924 rupees, 9 annas, on account of the second quarter of the year 1250 B. S., from the collector's office, which he had not given to the plaintiff, who accordingly instituted this suit for that amount with interest.

Radhamohun Chowdry in his answer states that he sent the sum of 912 rupees in notes and cash to the plaintiff through Gopaul Kishen Dulaul and others, and for which amount he holds a sealed acknowledgment dated Agrahn the 24th 1250 B. S.

The additional principal sudder ameen, Moulvi Myenooddeen Sudfar, decreed the plaint on the grounds set forth in his fysulla

dated the 29th of August 1845 A. D., but ordered that the sum of 12 rupees, 9 annas, be realized from Radhamohun Chowdry.

With the above decision of the additional principal sudder ameen the appellant being dissatisfied she preferred this appeal.

From the papers of this case, and from the arguments of the several pleaders of the two parties, it appears that the additional principal sudder ameen, Moulvi Myenooddeen Sufdar, did not make any enquiry regarding the notes alleged to have been sent through and paid by Gopaul Kishen Dalaul, by the defendant to the appellant. The additional principal sudder ameen ought to have investigated from whom and from whence the defendant, Radhamohun Chowdry, received the aforesaid notes, and also to have examined the books of account belonging to the appellant, Rane Kateaonee, to have seen whether the receipt of the notes in question had been entered in them. Moreover, the additional principal sudder ameen, Moulvi Myenooddeen Sufdar, decreed the case as laid in the plaint, which was for 1007 rupees, 12 annas, while he ordered only 12 rupees, 9 annas, to be paid by the respondent, Radhamohun Chowdry: I consider this decision unjust, and therefore I decree this appeal, and reverse the decision of the additional principal sudder ameen, Moulvi Myenooddeen Sufdar, dated August the 29th 1845 A. D. Costs to be paid by each party respectively for the present; the case to be remanded to the present additional principal sudder ameen for re-trial, and to be placed in its original number on his file. On the final decision of this case the losing party to pay the costs. The value of the stamp on the petition of appeal to be refunded to the appellant.

THE 21ST NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 19 of 1845.

Principal Sudder Ameen's Appeal.

Annundo Lall Roy, Permanund Roy, and Hurrischunder Roy,
(Plaintiffs,) Appellants,

versus

Muddoosoodun Chukerbuttee, Pertaubchunder Chukerbuttee, and
Beycharam Chukerbuttee, (Defendants,) Respondents.

THIS suit was to obtain possession of three cottahs of rent-free land and a pukka house for idol worship, with the necessary utensils, including damages for loss, calculated at rupees one thousand two hundred and thirty-seven and six annas.

The appellants in their original plaint state that in the three cottahs of hereditary rent-free land they had formerly built a thatched house in which the worship of their own permanent family idols might be practised, and that by degrees they erected a pucka house for the aforesaid purpose; that for some time, and up to the period of the dispossession of the appellants by the respondents, they, the appellants, had continued to perform their idol worship in the aforesaid pucka house; that in consequence of the respondents having dispossessed them, the appellants, of the land, &c. aforesaid, they had instituted the original suit for restitution of the aforesaid land and pucka house.

The defendants, Muddoosoodun Chuckerbuttee and Pertaubchunder Chuckerbuttee, in answer deny *in toto* the claim of the appellants, and state that the rent-free land in dispute is their (the respondents') own property, and that they had all along worshipped their idol "Barwarree" thakoor in the pucka house in question.

The principal sudder ameen, Baboo Roy Radhagovind Shome, dismissed the case on the grounds set forth in his decision dated May 21st 1845.

The appellants, being dissatisfied with the decision of the principal sudder ameen, Baboo Roy Radhagovind Shome, preferred this appeal on the ground that the pucka house, &c. in dispute had been built and made at their own expense, and to prove this important fact they, the appellants, had, on the 9th of May 1845 A. D., taken ten books of account or khata bhyes to be filed in the court of the principal sudder ameen, when the principal sudder ameen aforesaid, on the same day passed an order, stating in it that the necessary orders would hereafter be passed respecting the filing of those documents, namely, the books of account; that again subsequently they (the appellants) had taken the aforesaid books of account with a char dated 2d Maugh 1206 B. S., regarding the lands, &c. aforesaid in dispute, to be filed in the court of the principal sudder ameen, who, without admitting that evidence, unjustly dismissed the case.

The decision of the principal sudder ameen, Baboo Roy Radhagovind Shome, is clearly contrary to law, for it appears that he did not order the local investigation to be conducted according to the law as laid down in Section 17, Regulation IV. of 1793, for the ameen was not, previous to the investigation, duly sworn; therefore this appeal is decreed, and the decision of the principal sudder ameen, Baboo Roy Radhagovind Shome, reversed. The case is to be sent back to the present principal sudder ameen, James Reily, Esq., with orders to restore it to its original number on his file, and, having ordered a local investigation to be conducted according to law as laid down in Section 17, Regulation IV. of 1793, to try and decide the case according to the evidence. Costs to be paid for the

present, by each party respectively, and ultimately, by the losing party. The value of the stamp on which the petition of appeal was written to be refunded to the appellant.

THE 21ST NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 20 of 1845.

Principal Sudder Ameen's Appeal.

Bydenauth Bose and Kalleedoss Bose, (Defendants,) Appellants,

versus

Ramdhun Mundle, (Plaintiff,) Respondent.

THIS appeal is to procure the reversal of the orders of the additional principal sudder ameen, dated May 14th 1845, granting to respondent, sixteen hundred rupees, part of two thousand and sixty-six rupees, claimed by him.

The papers in this case shew that the respondent instituted an original suit against the appellants for loss of paddy, and the value of certain boats, &c., forcibly seized and taken from him, by the appellants, laid at two thousand and sixty-six rupees.

The appellants in their answer deny having taken the paddy, &c., and the truth of the claim *in toto*, and in explanation state, that the respondent, Ramdhun, owed to them a sum of money for which they, the appellants, had obtained a decree against him, Ramdhun Mundle, the respondent, who fabricated, and then instituted this suit, as a set off to the decree obtained against him.

The additional principal sudder ameen decreed the case to the extent of sixteen hundred rupees, on the grounds set forth in his decision, dated May the 14th 1845.

The appellants, being dissatisfied with the decision passed by the additional principal sudder ameen, Moulvi Mynooddeen Sufdar, preferred this appeal on the ground that the additional principal sudder ameen had not granted their solicitation of deputing persons unconnected with either party to make a local enquiry, and have the case investigated on the spot; but admitted the evidence of persons residing in other villages, in favor of the plaintiff; that moreover in a case No. 96 of execution of decrees, after the boat claimed by the plaintiff as his property had been attached, the boat in question was claimed by one Ramchand Mundle, an intimate friend of the plaintiff, Ramdhun, which claim being rejected, the boat was ordered to be sold; notwithstanding all these circumstances, the additional principal sudder ameen, Moulvi Mynooddeen Sufdar, decreed the value, and part of the hire of the aforesaid boat against them, the appellants, who pray that a local

enquiry and investigation may be instituted and conducted by persons who are not interested in the case.

There can be no doubt but that the additional principal sudder ameen, Moulvi Mynooddeen Sufdar, acted erroneously, in not having caused a local enquiry and investigation to have been instituted, as solicited by the appellants, for by his, the additional principal sudder ameen, not having done so, he leaves his decision incomplete and an important point open to dispute, which ought and could have been set at rest, had the local enquiry taken place: hence this case ought to be re-tried. Therefore the appeal is decreed, and the decision of the additional principal sudder ameen, Moulvi Mynooddeen Sufdar, dated May 14th 1845, is reversed. The case is to be remanded to the present additional principal sudder ameen, with orders that the case be restored to its original number on his file, and to be retried, after a local enquiry shall have been undertaken and completed by persons unconnected with, and uninfluenced in the case. Costs to be paid by each party respectively for the present, and, on the final decision of the case, by the losing party.

The value of the stamp on the petition of appeal, to be refunded to the appellant.

• . THE 21ST NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 21 of 1845.

Principal Sudder Ameen's Appeal.

Chunderseekur Banoorjea, Doorgadoss Banoorjea, Bonmallee Banoorjea, heirs of the late Ramrutton Banoorjea, Gooroopersaud Banoorjea, Moheschunder Banoorjea, (Defendants,) Appellants,

versus

Shamachurn Banoorjea, Moheschunder Banoorjea, Ramdhun Banoorjea, (Plaintiffs,) Respondents, and Chunderseekur Bose, auction purchaser.

THIS appeal is to establish the right and interest of the appellants to certain rent free lands and a tank, calculated at rupees seven hundred and twenty, annas ten, gundahs four.

From the decision of the additional principal sudder ameen, Molvi Mynooddeen Sufdar, dated the 16th of June 1845 A. D., the reasons for dissatisfaction set forth in the petition of appeal by the appellants, and the papers of the original suit, it appears that the respondents Shamachurn, Moheschunder, and Ramdhun Banoorjee, allege the tank in dispute, named Neuogy, together with twenty beegahs and four cottahs of ground, to be maul (or rent paying)

land, and that the aforesaid land and tank are situated within their putnee talook Onunthopore, and which lands, &c., aforesaid are farmed at an annual rent of rupees thirty-seven, annas eleven, gundahs four, to certain ryots, but of which land the appellants hold possession as rent free; that in order to establish the fact that the aforesaid land in dispute is maul, or rent paying, and not lackeraj, or rent free, with mesne profits, the respondents instituted the original suit, laid at rupees seven hundred, annas ten, gundahs four.

The appellants in their answer in the original suit state that out of two hundred and thirty-four beegahs and eleven cottahs of lackeraj (or rent free) land, as stated in their hereditary taidaud (No. 8760) of the year 1209 B. S., one hundred and one beegahs and two cottahs are situated in mouzah Onunthopore, &c., within which is situated the twenty-three beegahs and six cottahs of the land and tank now in dispute, and that at the time the British Government claimed the aforesaid land, under Regulation II. of 1819, the collector, on the perusal of the documents filed by them, (the appellants,) declared the land, &c., aforesaid, and in dispute, to be rent free, and therefore the claim of the plaintiffs (respondents) to the land in question to be unjust. Moreover the appellants state that when the tank aforesaid and land in dispute were let out to certain ryots by the appellants, at an annual rent of rupees fifty, annas eleven, the suit ought to have been calculated according to Section 8, Schedule B., Regulation X. of 1829 A. D. at eighteen times the amount of the annual rent, and laid at 1027-3-18, one thousand twenty-seven rupees, three annas, and eighteen gundahs, and the plaint ought to have been engrossed on stamp paper of the value of fifty rupees, instead of which the plaintiffs (respondents,) with a view to defraud the Government, state that the annual rent of the aforesaid land in dispute to be only thirty-seven rupees, eleven annas, and four gundahs, and then calculated the suit accordingly and filed the plaint on a stamp paper of the value of thirty-two rupees in contravention of Construction No. 872 and Circular Order dated 20th August 1841 A. D.

The case was sent for report by the additional principal sudder ameen, Molvi Mynooddeen Sufdar, on the 2d of November 1843 A. D., to the collector, under Regulation II. of 1819, who replied, on the 5th of August 1844, that the question, whether the land in dispute was within the one hundred and one beegahs and two cottahs above mentioned lackeraj land, situated in mouzah Onunthopore, or not, could as easily be discovered by the officers of the court of the additional principal sudder ameen, as by those of the office of the collector, and therefore he (the collector) returned the papers to the additional principal sudder ameen, Molvi Mynooddeen Sufdar, who (namely the additional principal sudder ameen) deputed an ameen to make the local enquiry afore-

said, and, on the 16th of June 1845 A. D., decreed the case for the reasons set forth in his decision of that date.

The appellant, being dissatisfied with the decision of the additional principal sudder ameen Molvi Mynooddeen Sufdar, dated the 16th of June 1845 A. D., preferred this appeal.

On a strict examination of all the papers of this appeal and of the original suit, it is clear that the decision passed by the additional principal sudder ameen, Molvi Mynooddeen Sufdar, on the 16th of June 1845, is incomplete, as well as contrary to law. The reply of the collector dated August 5th 1844 A. D., and the report of the ameen deputed to make the local investigation, do not deserve any weight to be placed on them; moreover, when the appellants, in their answer to the original suit, affirmed that the aforesaid land and tank in dispute were farmed at an annual rent of fifty rupees and eleven annas to certain ryots, it was the duty of the additional principal sudder ameen, Molvi Mynooddeen Sufdar, in the first instance to have instituted an investigation into the truth or otherwise of that fact, as directed by the Circular Order of the Court of Sudder Dewanny Adawlut dated the 20th August 1841: this duty the additional principal sudder ameen, Molvi Mynooddeen Sufdar, neglected to perform. It was also necessary that the collector should have distinctly stated in his reply dated August 5th 1844, whether the aforesaid land and tank in dispute were rent free (lackeraaj) or rent-paying (maul) land; and to prove the decision of the additional principal sudder ameen, Molvi Mynooddeen Sufdar, was contrary to law, and ought to be reversed in consequence, it is only to be shewn, that the local investigation ordered by the additional principal sudder ameen, Molvi Mynooddeen Sufdar, on the 8th March 1845, was not conducted according to law as it is laid down in Section 17, Regulation IV. of 1793 A. D.

Hence the appeal is decreed, and the decision of the additional principal sudder ameen, Molvi Mynooddeen Sufdar, be reversed. It is also hereby ordered that the case be returned to the present additional principal sudder ameen, with orders to restore it to its original number on his file, and, having strictly enquired into the allegation set forth in the reply of the defendants (appellants) in the original suit, namely, that they (the defendants) had themselves farmed the land and tank aforesaid in dispute to certain ryots at a rent of rupees fifty, annas eleven; and having instituted a local enquiry according to the law as laid down in Section 17, Regulation IV. 1793 A. D., as to the situation of the aforesaid land and tank in dispute; and having procured from the collector a clear and distinct report whether the aforesaid land and tank in dispute are lackeraaj (rent free,) or maul, (rent paying,) then to decide the case according to the evidence to the best of his judgment. The costs are for the present to be paid by each party respectively, and

ultimately by the losing party. The value of the stamp of the paper on which the petition of appeal is written is to be refunded to the appellant.

THE 23^D NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 27 of 1845.

Principal Sudder Ameen's Appeal.

Radhamohun Bose, (Plaintiff,) Appellant,

versus

Joykisto Mookerjee, Rajkisto Mookerjee, Muddoosoodun Kirttee, Obeychurn Bose, and Praunnauth Chowdry, (Defendants,) Respondents.

SUIT for contesting a summary award of the collector and to establish the right of lackeraj land, and to continue in possession of the same, laid at Company's rupees two hundred and ninety-three.

The papers of the original suit and of this appeal shew, that the plaintiff in his plaint asserts that he holds possession of fourteen beegahs and two and a half cottahs of mohothrun and dewutter lackeraj land, within the village of Bullubeepore *alias* Goborarah, &c., some part being hereditary and some portion being purchased property; that Joykisto Mookerjee and Rajkisto Mookerjee, the zumeendars of a twelve annas and sixteen gundahs share in lot Reedhoyrampore, instituted a suit under Regulation VII. of 1799, in the collector's court, against the plaintiff, alleging that out of the aforesaid fourteen beegahs and two and a half cottahs of land, the plaintiff holds possession of nine beegahs and three cottahs, which is in fact ten beegahs and seventeen and a half cottahs, without paying any rent whatever; and that the zumeendars instituted a suit, and obtained an *ex parte* decree for rupees twenty-four, annas fourteen, which sum with the costs was subsequently deposited by the plaintiff in the collector's court, and for the reversal of that decision of the collector, the plaintiff instituted an original suit in the court of the sudder ameen. The sudder ameen on the 24th of November 1842 A. D., struck the case off his file under the provisions of Act XXIX. of 1841 A. D. The plaintiff appealed under No. 77, against the order passed by the sudder ameen on the 24th of November 1842, which appeal was dismissed by the additional principal sudder ameen, as no regular appeal can be legally preferred against such orders.

The plaintiff then instituted an original suit on the 15th June 1844 A. D., for the reversal of the collector's summary order and

also for the restoration of the deposit of Company's rupees twenty-four, annas fourteen; which he, the plaintiff, had placed in the court of the collector, and also to be continued in possession of the lackeraj land.

Joykisto Mookerjea, Rajkisto Mookerjea, and Oboychurn Bose, in answer, state that as the plaintiff holds no sunnud, nor taidaud, &c., the land in dispute cannot be considered as rent free, but must be taken for rent-paying land, under the provisions of Section 25, Regulation XIX. of 1793 A. D., and Section 28, Regulation II. of 1825 A. D. Moreover the order of the collector of the 26th of July 1841 is final, according to Regulation VIII. of 1831 A. D.

This case was sent to the collector for his report under Regulation II. of 1819 A. D., who replied, on the 28th of April 1845 A. D., that the documents filed by the plaintiff do not contain proof that the land is rent free, and therefore the case ought to be dismissed.

The principal sudder ameen, Baboo Roy Radhagovind Shome, dismissed the case for the reasons laid down in his decision dated the 30th of June 1845 A. D.

The appellant, being dissatisfied with this decision of the principal sudder ameen, Baboo Roy Radhagovind Shome, preferred an appeal on the grounds set forth in his petition of appeal.

The appellant has in contravention of Section 6, Regulation VIII. of 1831 A. D., and Section 2, Regulation XXIX. of 1841 A. D., instituted, a second time, this suit on the 15th of June 1844, for the reversal of the summary award passed by the collector on the 26th of July 1841 A. D.; and added an additional demand, namely, to continue in possession of the land in dispute. Under this, as well as the other circumstances set forth in the decision of the principal sudder ameen Baboo Roy Radhagovind Shome, I do not perceive any ground on which the claim is set up, and the objections offered by the appellant can be legally admitted: therefore I shall not disturb that decision of the principal sudder ameen. This appeal is dismissed, and the decision of the principal sudder ameen Baboo Roy Radhagovind Shome, dated the 30th of June 1845, is confirmed.

Costs of appeal to be paid by the appellant, and respondents Joykisto Mookerjea, Rajkisto Mookerjea, and Obeychurn Bose, respectively, they having appeared without being summoned.

THE 24TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 5 of 1844.

Collector's Appeal.

Radhabeenode Haldar, Fuqueer Chunder Haldar, Ramkishore Haldar, Bydenauth Haldar, Shamchurn Haldar, and Sreenath Haldar, (Defendants,) Appellants,

versus

Meer Daud Ali, zumeendar, (Plaintiff,) Respondent.

THIS claim is to procure the reversal of a decision of the collector, and to establish the fact of the land being rent free (lackeraaj,) laid at rupees five hundred and forty-five, annas five, gundahs six.

The papers of this case shew, that the respondent in his plaint stated that within his zumeendaree, turf Jhakra, is the village Jhalloor, attached to which is a puttee, called Chaldah Thollah, of which five beegahs one cottah is of rent paying alluvial land gained by the dereliction of the river Seelabuttee, for which the appellants refuse to pay rent, and they the appellants hold possession of it as rent free land. In order to establish the fact that the land in dispute is rent paying (maul,) he, the respondent, instituted a suit for the arrears of rent for five years, calculating the revenue at thirty rupees, four annas, and nine gundahs per annum, making in all five hundred and forty-five rupees, five annas, and six gundahs.

The appellants in answer state, that they hold twenty-one beegahs and eight cottahs of dewuttur land, hereditary property, within the above mentioned puttee Chaldah Thollah; also twelve beegahs and ten cottahs which they procured by giving other land, in another spot, in exchange for it, making in all a total of thirty-three beegahs and eighteen cottahs, which is surrounded by a ditch, and within which there is not any rent paying (or maul) land; that the plaintiff's grandfather instituted a suit in 1212 B. S. under No. 2193 against the ancestors of appellant for rent, saying the land was maul (rent paying) land. It was then decided that the land aforesaid in dispute was lackeraaj, rent free, and not maul rent paying, and that case No. 96 (in which the Government was a party) was remanded for re-trial, when all the land entered in the hereditary taidad was confirmed to be rent free.

The collector decreed the case on the 3d of April 1844 on the ground that on the perusal of the official records in his office, in which the copies of the taidad are deposited, it appeared that the appellants possessed nineteen beegahs only of rent free land within the puttee Chaldah Thollah; moreover, the appellants could not produce any sunnud nor taidad for the remaining land, that from the evidence of the witnesses for the respondent and the "lawazima" papers filed by the respondent, it appears that the land in dispute is alluvial, and gained by the dereliction of the river, and is situated without the land claimed by the appellants,

(which is stated by them to be surrounded by a ditch,) and is rent paying (maul) land.

The appellants, being dissatisfied with the decision of the collector, preferred this appeal.

Since the appellants admit in their answer to the original suit, that the land in dispute is situated within the thirty-three beegahs and eighteen cottahs of lackeraj land, and which they assert to be surrounded by a ditch, it became the duty of the collector to have directed a local investigation to be instituted on the spot to prove the truth or otherwise of that assertion of the appellants. The collector decreed the case without doing so, viz. causing the local investigation to be made, on the evidence of the witnesses adduced by the zumeendar as well as the lawazima papers filed by him, both of which could easily have been procured by a zumeendar. I consider the decision of the collector incomplete and imperfect, and therefore decree the appeal and reverse the decision passed by the collector on the 3d April 1844, and order that the case be remanded for re-trial to the collector, with directions that the case be restored to its original number on his file, and, after causing the local investigation to be made, to re-try the case.

The costs to be paid by each party respectively for the present, the losing party ultimately to pay the costs. The value of the stamp paper on which the petition of appeal is written to be refunded to the appellant.

THE 24TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.
No. 22 of 1845.

Principal Sudder Ameen's Appeal.

Issurchunder Sein, (Plaintiff,) Appellant,
versus

Dwarkanauth Bose and Dhonmonee Dasee, (Defendants,) Respondents.

THIS claim is for the reversal of certain summary orders passed for rupees five hundred and fifty-one, nine annas, and four gundahs.

The appellant in his original plaint sets forth that Dwarkanauth Bose, one of the respondents, had sold, on the 15th of Aghan 1249 B. S., to him (the appellant) his, viz Dwarkanauth's, share of three gundahs, three kowries, and five dhontees of talook kismut Khoolsinee, being his ancestral property, for the sum of rupees four hundred and ninety-seven. The deed of sale was duly registered, and the appellant was also duly put into possession of the aforesaid share by the respondent Dwarkanauth, the vendor. The appellant petitioned the collector to have the pro-

perty aforesaid, now in dispute, transferred from the name of the respondent Dwarkanauth Bose, to that of himself, namely, of Issurchunder Sein the appellant, in the books of the collectorate. That the second respondent Dhunmonee Dassee, in connivance with the respondent Dwarkanauth Bose, got the property aforesaid, which the appellant asserts that Dwarkanauth Bose had sold to him, the appellant, attached on the 25th of Phalgun 1249 B. S., in a case of execution of decree No. 23, as being the property of Dwarkanauth Bose. The appellant put in his claim before the head moonsiff, and subsequently the case was transferred from the court of the head moonsiff to that of the additional principal sudder ameen. That officer, namely, the additional principal sudder ameen, rejected the claim of the appellant, and the order of the principal sudder ameen was upheld on appeal by the judge. The petition filed in the court of the collector was likewise struck off the file. The appellant, being dissatisfied with those orders, instituted an original suit for the reversal of them, and also to continue in possession of the aforesaid property.

The respondent Dhunmonee Dassee in her reply alleges, that the appellant's claim, &c., is altogether false; and that he, the appellant, never had possession of the share aforesaid in dispute, even for one day; that the appellant entered into a league with the respondent Dwarkanauth Bose with a view to upset the decree passed in favor of her, the respondent, Dhunmonee Dassee, and then instituted the suit on the strength of a fabricated deed of sale.

The additional principal sudder ameen, Molvi Mynooddeen Sufdar, dismissed the case on the 17th of June 1845 A. D., on the grounds set forth in his decision.

The appellant in his petition of appeal states, that the following documents, namely, the registered deed of sale; the requisite paper of the talook, and the dakheluh of the rent paid into the collector's office; a list of the names of the witnesses whose names are affixed to the registered deed of sale; and the evidence of several respectable ryots of the talook to the fact of the sale of the share aforesaid, and to the putting the appellant into possession of the same by the vendor, the respondent Dwarkanauth Bose, prove his case, notwithstanding which the additional principal sudder ameen, Molvi Mynooddeen Sufdar, dismissed it most unjustly. It does not appear that the additional principal sudder ameen, Molvi Mynooddeen Sufdar, ordered any local investigation to be instituted on the spot as to the fact of the sale of the share of the respondent Dwarkanauth Bose, being a fair and legal one, by the vendor to the appellant, Issurchunder Sein, namely, as to the sum being a just one, and that possession was *bona fide* given to the purchaser: this he, the additional principal sudder ameen, ought to have fully proved, and his having neglected to do so, leaves his

decision imperfect and incomplete. Therefore, I decree the appeal, and reverse the decision of the additional principal sudder ameen Molvi Mynooddeen Sufdar, dated the 17th of June 1845 A. D., and order that the case be remanded to the present additional principal sudder ameen, with directions to restore the case to its original number on his file, and, having caused a local enquiry on the spot, as to the fact of the alleged sale by the respondent, Dwarkanauth Bose, to the appellant Issurchunder Sein, was a fair, valid, and legal sale, to re-try the case, and decide according to the evidence, and to the best of his, the present additional principal sudder ameen's, judgment. The costs for the present are to be paid by both parties respectively, and ultimately by the losing party. The value of the stamp paper upon which the petition of appeal is written, is to be refunded to the appellant.

THE 25TH NOVEMBER 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 41 of 1845.

Principal Sudder Ameen's Appeal.

Shisteedhur Bose, Ramdyal Bose, Sreenath Bose, and Dhurrun Doss Bose, (Defendants,) Appellants,

versus

Bykuntanauth Mullick, former talookdar, at present Omortonauth Mullick, Omachurn Bose, auction purchaser of a Putnee talook, Radhamohun Samunt, and Kummul Samunt, (Plaintiffs,) Respondents.

THIS claim was for damages for loss of produce, &c., and was laid at Company's rupees six hundred and sixty-five, annas fourteen, gundahs ten.

The papers of this case show that Bykuntanauth Mullick, Radhamohun Samunt, and Kummul Samunt, were plaintiffs in the case, instituted in the first instance; their plaint states that the village Nutteebpore, measuring thirty-four beegahs and eleven cottahs, within lot Barrooeeparah belonging to Bykuntanauth Mullick, was rented to Radhamohun Samunt and Kummul Samunt, at an annual rent of eighty-two rupees. In the year 1248 B. S. Radhamohun Samunt cultivated eleven beegahs and thirteen cottahs of this land, and its produce was paddy, when Shisteedhur Bose, appellant, by fraud had the produce sequestered and sold, on a pretence for arrears of rent due to him, by the ryot Ramsoonder Paul, stating the land in question to be nine beegahs and a half, instead of eleven beegahs and thirteen cottahs.

The appellants reply that in the month of Joistee 1249 B. S., Omertonauth Mullick purchased the aforesaid lot Barrooeeparah at the time it was put up for public sale, under Regulation VIII. of 1819, and was in his possession at the commencement of this

suit, notwithstanding which, in the month of Shrabun of the same year, Bykuntanauth Mullick instituted this suit, stating that he was himself the talookdar of lot Barrooeeparah, consequently no person could legally sue for any property to which he had not any right: that the land in dispute is specified in the taidad of the collector No. 29651, to be dewuter and mohatrawn, and which land had been formerly resumed by the Government, but subsequently, on appeal to the special commissioner, it had been released under No. 205.

That in the year 1248 B. S. the ryot Ramsoonder Paul, having failed to pay the arrears of rent for the land in dispute, its produce was attached and sold for 24 rupees, &c. &c.

The additional principal sudder ameen, Molvi Mynooddeen Sufdar, sent the nuthee of the case to the collector for his report, under Regulation II. of 1819 A. D., who returned the papers reporting that the land in dispute was rent-free, and that the case ought to be dismissed.

The additional principal sudder ameen, considering the land in dispute to be situated within the thirty-four beegahs and eleven cottahs rented to Radhamohun Samunt and Kummul Samunt, in the village of Notheebpore, decreed the case on the grounds set forth in his fysalla dated September 24th 1845 A. D.

The appellants' being dissatisfied with the above decision, preferred this appeal.

From the appellants' answer in the original case, it appears that Bykuntanauth Mullick had no right to, nor interest in the property in dispute, and that his claim could not legally be admitted. To this statement Bykuntanauth Mullick preferred no objections, only stating in his petition that his rejoinder is to the same purport as his plaint.

From the petition filed by Omertonauth Mullick, requesting to have his name substituted for that of Bykuntanauth Mullick, it does not appear on what date he purchased the talook, and no objections having been made by any one to that point, I am of opinion that the appellants' statement is correct, consequently the claim of Bykuntanauth Mullick to the property in dispute cannot legally be admitted.

It was not considered necessary to pass any order on the petition presented on the behalf of Moharanee Kumul Coomaree, soliciting to be considered the original plaintiff in this case, as the property in dispute now belongs to her.

The plaint of Bykuntanauth Mullick has been already rejected. Therefore it is ordered that this appeal be decreed, and the decision of the additional principal sudder ameen, Molvi Mynooddeen Sufdar, dated the 24th of September 1845 A. D., be reversed, and the original case nonsuited. The costs of both courts to be paid by Bykuntanauth Mullick.

ZILLAH JESSORE.

THE 5TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 15 of 1846.

*Appeal from the decision of Moulvee Nujumul Huk, First Principal
Sudder Ameen.*

Mosdeen Kahar *alias* Mossea Kahar, Koresh Kahar, and Fureed
Gazee, (Defendants,) Appellants,

versus

Rada Mohun Ghose, (Plaintiff.)

THIS was a suit for the possession of one beega and eighteen cottas of land, situated in Choulea, in turf Ramnugur, pergunnah Imadpore, valued at rupees 58-8, and for the mesne profit for the said land from the month of Badoon 1251, amounting to rupees 4, 4 annas, with interest.

The principal sudder ameen tried the case on its merits, and gave the plaintiff a decree.

It appears that the appellant, Furreed, sued the appellant, Mosdeen, before the moonsiff of Sajeelee, for possession of this land, and on the 11th May 1844, got a decree for possession of it, although Rada Mohun Ghose objected to the suit as he had a claim to the property. Furreed stated that he got a potta from Mosdeen, who pays rent to Issurchunder, who has a share in the talook with Rada Mohun Ghose.

But Rada Mohun Ghose included his own partner in the talook among the defendants, and urged that the property did not belong to the talook but was his own lakheraj; for this reason the suit could not be tried by a moonsiff, and for the same reason it was necessary to have sent it to the collector for his opinion under Regulation II. of 1819, Section 30, which, however, has not been done. I therefore send the case back for re-trial. The value of the stamp on which the appeal has been made may be returned.

THE 6TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 12 of 1846.

Appeal from a decision of Baboo Loknath Bose, Second Principal Sudder Ameen.

Ram Rutton Ray, Hurnath Ray, and Radachurn Ray, (Plaintiffs,) Appellants,

versus

Ranee Kateeanee, zemindar, Pudum Monee Dossea and Gurodoss Ray, putnec talookdars, and Aditu Chunder Sain, Brijokishor Sirkar, and others, (Defendants,) Respondents.

THIS suit, valued at rupees 1932, was for possession of, and to establish a clear title to, a jumma called Dybukkee Nundunpore, &c., in lot Wuzeerpore, in pergunnah Nuldee. The suit was defended only by Aditu Chunder Sain, and was decided by the principal sudder ameen according to a compromise between the plaintiffs and Brijokishor Sirkar. It was stated in the decision that the right of no person was determined except of those who were parties to the compromise, and it was ordered that Aditu Chunder Sain should have his costs paid, as it was not necessary that he should have been made a party to the suit.

The plaintiffs state that they bought the property in the name of Brijokishor Sirkar, for rupees 1001, from Sree Muttee Dossea, on the 27th of March 1840, after which there was a suit under Act IV. of 1840 between Brijokishor and Aditu Chunder, respecting this property, and it was finally determined that Brijokishor was in possession. After this the magistrate required the personal attendance of Brijokishor, but he had absconded, and the magistrate attached this property as belonging to him, and although the property has since been released, this suit appears to have been instituted partly to determine the want of right of Brijokishor. But the suit might also have been very properly brought against Aditu Chunder Sain to enable the plaintiffs to have a good title to their property, and the justice of this is shewn by the reply of Aditu; he states that he has an hereditary claim, and that he had intended to bring a suit to try the validity of his rights; hence may arise the question whether the person in possession, or another claimant, has the right of selecting the time for a trial of right; if a person who may have been ousted cannot select his own time, he may not be able to bring forward his proof in the time usually allowed by the courts; but there has been no hurry in bringing this action, for the suit under Act IV. of 1840, was decided against Aditu Chunder on the 3rd of August 1840, and the civil suit was not instituted until 17th April 1845, and the principal sudder ameen directed him, on the 7th November 1845, to produce his

papers on the 14th of that month, yet he had not offered to do so on the 11th February 1846, when the suit was decided. The pleadings in the suit were complete, and the case was ready for decision before the compromise was made; and the claims of Aditu Chunder Sain and Brijokishor Sirkar having no connexion with each other, the one might have been withdrawn while the other was urged; and although the right of Aditu Chunder has not been determined by the principal sudder ameen it should have been determined. Aditu Chunder Sain has brought forward no evidence of his claim, and consequently it is hereby determined that he has no right to the property, and since he has asserted that he has a claim, he must be answerable for the consequences of the necessity of the suit, and pay his own costs as well as all the costs of this appeal.

THE 10TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 401 of 1846.

Appeal from a decision of Pudum Lochun Sain, former Moonsiff of Durmpore.

Mohurram Mundul, Appellant,

versus

Nubokomar Sirkar.

THIS was a suit for rent decided by the moonsiff on its apparent merits on the 29th December 1845. A petition of appeal on the full amount of stamp was made to me on the 16th May 1846, for admission of an appeal, on the ground that the appellant had had no notice of the suit served on him, and that he had appointed no vakeel, and that the apparent defence was not only fictitious, but admitted points which were not true, and would be injurious to him hereafter. That his rent was not as great as was stated, and that he did not pay it to the plaintiff. The moonsiff was directed by me to demand an explanation from the vakeel who undertook the case, and to report on the circumstances; and on revising the report I am of opinion that there are grounds for very strong suspicion that the proceedings are fraudulent. Mohurram Mundul lives 4 or 5 coss from the moonsiff's cutcherry, but the witnesses to the vakalutnamah live close to the cutcherry. It is very unusual for a ryot to come forward with a defence in a civil suit previous to any proclamation being made, and in this instance the appellant as it would appear did not wait for the proclamation required by Regulation XXIII of 1814, Section 22. The moonsiff is directed to bring the suit again on his file and to re-try it on its merits, unless there should be clear proof of the strongly suspected

fraud produced during the trial, in which case he will dismiss the suit on that point. The moonsiff may pass an order on the cost of this appeal. The amount of the stamp on which the appeal has been written may be returned.

THE 12TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 108 of 1846.

Appeal from Mukbool Ahmud, Moonsiff of Tala.

Punchanund Ghose and Dwarkanath Ghose, Appellants,

versus

Pearee Mohun Bose, (Plaintiff,) Respondent.

THIS was a suit for the amount of a bond for rupees 100, with interest, brought by the plaintiff against these appellants and two other persons. In the record there is a vakulutnamah given by the two other persons to Eshan Chunder Sing and another. Notices of the suit had been issued, and then Eshan Chunder Sing put into court a compromise on the part of the two persons for whom he was vakeel and also on the part of these appellants. The moonsiff gave a decree against all the four persons who appeared to have compromised the case. The appeal having been admitted by me more than 3 years after the decision of the moonsiff on the strong suspicion that the case was fraudulent, I now see no reason for allowing the decree of the moonsiff to be executed against these appellants, for the bond had never been produced in court, and the appellants had never appeared in person or by vakeel, and an ex-parte decision could not have been given against them on the merits of the case.

The decision of the moonsiff as it relates to these appellants is reversed, the respondent must pay the costs of this appeal, and the vakeel will be required by a separate proceeding to defend his conduct, when a proper order will be passed respecting it.

THE 12TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 139 of 1846.

Appeal from Baboo Anund Chunder Banorjea, Moonsiff of Kalopole.

Chunde Persaud Kund, Appellant,

versus

Kaloo Sirdar, (Plaintiff,) Respondent.

THIS was a suit brought according to the Regulation for a receipt for rent paid. Five rupees were said to have been paid, and the

plaint was written on a stamp of 1 rupee. The suit was undefended, the moonsiff tried it on its merits, and gave a decree for a receipt and for 5 rupees damages. I see no reason why the suit should not have been defended. If the moonsiff gave damages he should have given rupees 10, but the plaintiff is satisfied. Since the suit was brought according to the Regulation and the stamp on which the plaint was written would have carried a suit for full damages according to law, I see no reason for altering the moonsiff's decision, although the plaint did not mention any amount of damages or contain the word damages. The decree of the moonsiff is confirmed, and the appellant must pay the costs of the appeal.

THE 12TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 144 of 1846.

Appeal from Moulvee Hamid Alee, Moonsiff of Jenyдах.

Sakir Mahomed, (Defendant,) Appellant,

versus

Michael Jacob *alias* Jacker, (Plaintiff,) Respondent.

THIS was a suit for the amount of a bond for rupees 75, with interest, amounting together to rupees 99-10. The moonsiff tried it on its merits, and gave the plaintiff a decree against this appellant, and a man called Warris, who has not appealed and who acknowledged the debt before the moonsiff. It is said that the case is fraudulent; that Warris and the plaintiff were fellow-servants of Mr. Dumbal, and that this suit has been got up as counter to a decree which Sakir Mahomed has obtained against Mr. Dumbal. I do not find any proof that Warris is a servant of Mr. Dumbal, but he lives at a distance from the appellant, and it does not appear that there is any connexion between them. Michael Jacob appears to have been a servant of Mr. Dumbal, as he is said in the bond to have been of the Donkally factory which belongs to Mr. Dumbal, and one of the vakelutnamahs (signed by him in different ways) was written at Donkally. Sakir Mahomed has produced a decree against Mr. Dumbal for mesne profits of land from which he was ousted within about a month of the date of this bond, viz. 24th Chait 1250, and it is very improbable that Michael Jacob should have got a bond at that time from a man who was disputing with his master. In my opinion the grounds for thinking the bond fraudulent are stronger than for thinking it good, and I therefore reverse the decision of the moonsiff as it relates to this appellant. The plaintiff will pay the costs of the appellant.

THE 12TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 153 of 1846.

Appeal from Kazee Mohumud Sabir, Moonsiff of Mahomedpore.

Kumla Kant Go and Kashenath Go, (Defendants,) Appellants,

versus

Hurris Chunder Kund, (Plaintiff,) Respondent.

THIS was a suit for a bond for Sicca rupees 100, with interest, amounting to Company's rupees 213-5-6: it is dated 17th Aghun 1240. The bond bears interest at the rate of 13 Sicca courees for each Sicca rupee by month, which being more than 12 per cent. by year, the moonsiff gave a decree for the amount of the bond without interest. The appellants are uncle and nephew the one to the other, but Kashenath, the nephew, alone defended the suit. I might not have objected to the original bond, but the suit was not brought until nearly 12 years after its date, and it is very evident that the names of the witnesses, by whose evidence alone the bond would have been proved, have been lately added to the others. From the appearance of the writing I have no doubt of this fraud, which is sufficient to vitiate the document. I reverse the moonsiff's decision. The plaintiff will pay the costs of both suits.

THE 13TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 238 of 1846.

Appeal from Anund Chunder Banerjea, Moonsiff of Kalopole.

Mulung Sheikh, Akubbur Sheikh, Alum Sheikh, and Secunder Sheikh, Appellants,

versus

Esur Chunder Ray, (Plaintiff,) Respondent.

THIS was a suit for that part of the amount of a bond for rupees 31, which remained unliquidated, and for interest due on it. The plaint was for rupees 31, 11 annas. The moonsiff tried the case on its merits, and gave the plaintiff an *ex parte* decree. It is said that the appellants were not aware of the suit, but as the plaintiff, the appellants, and the witnesses to the issuing of the notice of the case, all live in the same village, I see no reason for allowing any defence to be made now, which I believe might have been made before the moonsiff. The bond is legal and proved good, and the suit has been regularly tried. I confirm the decision of the moonsiff.

THE 13TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 290 of 1846.

Appeal from Kylas Chunder Deb, Moonsiff of Singhea.

Sunatun Mundul, Appellant,

versus

Sreemuttee Dibe, Plaintiff.

THIS was a suit on account of a bond for 15 Sicca rupees, with interest, amounting to rupees 32. The moonsiff, having tried it on its merits *ex parte*, gave the plaintiff a decree. The appellant has stated that he was absent from the district, and was unable to defend the suit, and he has produced witnesses to prove it. The case is suspicious from the circumstance of the paper on which the bond is written having been bought 25th Assar 1240 and the bond having been dated 27th Phagoon 1240, and the suit having been instituted on the 2d August 1845, only a short time within the limit of 12 years from the time when the bond was made payable. Under these circumstances I send the case back to be re-tried by the moonsiff. The amount of the stamp on which the appeal has been made may be repaid. The moonsiff may pass an order on the costs of this appeal.

THE 17TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 509 of 1845.

Appeal from Lukenarain Mitter, Moonsiff of Noabad.

Sheikh Sadik and Sheikh Danish, (Defendants,) Appellants,

versus

Ramonee Dossea, heir of Ramkunai Ghose, (Plaintiff,) Respondent.

THIS was a suit for rupees 10 rent due, and for interest thereon. The moonsiff tried the suit on its merits, and gave the plaintiff a decree. The plaintiff stated that the defendants were her tenants, and that she paid rent to persons called Anund Chunder and Puncharam. These last denied that the plaintiff had any thing to do with the property, and she accordingly produced her lease, but as the rent is for more than 12 rupees, and the plaintiff had under-tenants, and the lease is written on plain paper instead of having a stamp, I send the suit back to the moonsiff to be disposed of under Circular Order, dated 7th January 1842, No. 179. The moonsiff may pass an order on the costs of this appeal.

THE 17TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 517 of 1846.

Appeal from Pudum Lochun Sain, Moonsiff of Dhurmpore.

Bebée Ashrufonissa, (Plaintiff,) Appellant,

versus

Bebée Nujeeba Katoon, (Defendant,) Respondent.

THIS was a suit to determine the rent of 92 beegahs, 14 cottahs of land, the plaintiff requiring that it should be according to the pergunnah rate. The land is situated in mouzah Duhakulla, in pergunnah Mohumudshai. The moonsiff tried the case on its merits and dismissed the plaint. The suit was instituted before the moonsiff on the 22nd August 1844, and, the investigation into its merits going on *ex parte*, an ameen was sent to measure the lands on the 15th February 1845. Bebee Nujeeba Katoon had appeared in court on the 20th December 1844 to watch the case, but she made no defence until 20th May 1845 and filed no document to support it until 16th August following. The great delay in making the defence makes the documents on which it is founded very suspicious, for I see no good reason why there should have been such delay. The defence rests on a decree of court for 22 beegahs of land, the rent of which is 12 rupees, and there neither is, nor could be admitted, any dispute about this. There is also a document produced dated 25th Assin 1228 B. E., purporting to be a lease of 52 beegahs, 6 cottahs, at an annual rent of rupees 30, 8 annas, given by Sheikh Sullemulla Choudree, the husband of Ashrufonissa, before the property was transferred to her by her husband. In this document is mentioned the land given in the above-mentioned decree without its being stated what is the quantity of the said land, but the 22 beegahs are not included in this document as part of the 52 beegahs, 6 cottahs. This document is objected to and is said to be forged, and there is an attempt to prove that it could not have been given by Sullemulla Choudree for he was in Calcutta at the time, and it would have been proved by a book containing receipts for letters sent to him by post and having the post office seal on each receipt, but I find that these old seals are kept in the possession of a native attached to the post office, and I believe the book from its appearance is a forgery. However the written lease of the land has been lately prepared on plain country paper, and has been rubbed down with the hope of making it look old, and receipts for rent have been prepared to correspond with it. This is my opinion of it notwithstanding it has the impression of a seal, which is very like indeed to the impression of the genuine seal; and my opinion is much

strengthened, owing to the delay which took place in producing it.

Under the above circumstances I modify the decree of the moonsiff as follows. 22 beegahs must remain at a rent of 12 rupees according to the former decree, 52 beegahs, 6 cottahs, which by the ameen's measurement and by the acknowledgment of the defendant are in her possession, may be assessed at the pergunnah rate, and according to the ameen's report. And the same order is passed respecting the remainder according to the plaint, (but less than the remainder in the defendant's possession according to the ameen's measurement,) viz. 18 beegahs, 8 cottahs. The respondent must pay the costs.

THE 18TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 410 of 1845.

Appeal from Moulvee Abdur Roof, Moonsiff of Sulkea.

Ramkishor Mojumdar, (Defendant,) Appellant,

versus

Madob Manjee, Bungshee Manjee, and Ushoram Manjee, (Plaintiffs,) Respondents.

RAMKISHOR MOJUMDAR had, on the 12th February 1844, bought the rights and interests of Ramsunder and Aradun in the fishery of those parts of the Chitra Nuddee which are between Sulkeah-pool and Semeakalee, and also between Sulkeah-pool and Semeakalee great ghat, and on the 9th Jait 1252 he attached the property of the plaintiffs for rent as his tenants, the amount due from them being rupees 4-13-9-3, and they consequently brought a suit for replevin. The moonsiff gave the plaintiffs a decree, from which this is an appeal. Before the moonsiff there had been no evidence that the appellant had been put in possession, or had been registered in the place of those whose interests he had bought. Before me he has produced an attested copy of the acknowledgment of his having been put in possession by the collector, and of which there is no doubt, and there is a document which shews that his name was registered in the superior landholder's office. The dispute is not respecting the rent, but whether or not it should be paid to this or that person, and since it was by order of the civil court that the right and interest of Ramsunder and Aradun were sold, and no one had even objected to their having some degree of possession previous to the sale, and these appellants are tenants within the bounds of the fishery, it is possible that these appellants are under-tenants or partners, but as they have paid their rents direct to the superior landlord, and it is not shewn that they

had ever before paid their rent to any other person, I think that the moonsiff's decision was correct. The moonsiff did not award damages, neither were they sued for, and I confirm the decision of the moonsiff. The appellant must pay the costs of the appeal.

THE 18TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 411 of 1845.

Appeal from Moulvie Abdur Roof, Moonsiff of Sulkea.

Ramkishor Mojumdar, (Defendant,) Appellant,

versus

Ramkishor Manjee and Junnumjy Manjee, (Plaintiffs,) Respondents.

THIS was a suit similar to No. 410, which was decided by the moonsiff in favor of the plaintiffs. The attachment was for 3 rupees, 12 annas and 8 pie, made on the same day as the above, viz. 9th Jait 1252, and the moonsiff released the attached property. I see no reason to alter his decision. The appellant must pay the costs of the appeal.

THE 18TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 412 of 1845.

Appeal from Moulvie Abdur Roof, Moonsiff of Sulkea.

Ramkishor Mojumdar, (Defendant,) Appellant,

versus

Aradun Manjee, Byrub Manjee, and Goluk Manjee, (Plaintiffs,) Respondents.

THIS was a suit similar to No. 410 of 1845, this day decided by me. It was brought by other fishermen on account of an attachment made the same day, viz. 9th Jait 1252. The moonsiff decided this case in favor of the plaintiffs, and I see no reason for altering his decision. The appellant must pay the costs.

THE 18TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 413 of 1845.

Appeal from Moulvie Abdur Roof, Moonsiff of Sulkea.

Ramkishor Mojumdar, (Defendant,) Appellant,

versus

Suroop Manjee and Premnarain Manjee, (Plaintiffs,) Respondents.

THIS was a suit similar to No. 410 of 1845, this day decided by me. It was brought by other fishermen on account of an attach-

ment made on the same day as that of suit No. 410, viz. 9th Jait 1252. The moonsiff decided the case in favor of the plaintiffs, and I see no reason for altering his decision. The appellant must pay the costs of the appeal.

THE 19TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 35 of 1844.

Appeal from Mr. J. N. Thomas, Sudder Ameen of Jessore.

Esurchunder Roy, (Plaintiff,) Appellant,

versus

Himala Bebee, Kasim Turfdar, and 30 other persons, (Defendants,) Respondents.

THIS was a suit to recover damages for the non-performance of a contract to cultivate indigo plant, entered into by nine persons, the objection of each of whom has been distinctly specified as required by Regulation VI. of 1823, Section 8. The suit has been brought against the said ryots and other persons who are said to have prevailed upon them to break their contract. The sudder ameen tried the suit on its merits, and gave the plaintiff a decree, but not to the extent required. Although the written engagement may be valid against all the ryots separately, yet as the transactions of each are separate and their contracts distinct, they must be prosecuted in separate suits. Under these circumstances I nonsuit the plaintiff, who must pay the costs of both suits.

THE 19TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 37 of 1844.

Appeal from Mr. J. N. Thomas, Sudder Ameen of Jessore.

Himala Bebee, Kasim Turfdar, and 3 other persons, (Defendants,) Appellants,

versus

Esur Chunder Ray, (Plaintiff,) Respondent.

THIS was a suit to recover damages for the non-performance of a contract to cultivate indigo plant. The sudder ameen tried the suit on its merits, and directed that the money which had been

said to have been advanced by the plaintiff should be returned. This appeal has been made on the ground that these five appellants were not parties to the contract, but since the plaintiff has already been nonsuited in appeal No. 35 of 1844, no order need be passed in this case except that the appellants will receive their costs.

THE 19TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 45 of 1845.

Appeal from Baboo Loknath Bose, 2d Principal Sudder Ameen of Jessore.

W. H. Rainey, Appellant,

versus

Fukeer Chunder Ray, the Government Pleader, (Plaintiff,) Respondent.

THIS was a suit brought by the Government pleader, under an order from the salt agent of the Twenty-four Pergunnahs, against Mr. Rainey, for the price of a house sold to him and for interest of the money since the sale. The principal sudder ameen tried the suit *ex parte* and gave the plaintiff a decree; but in appeal I nonsuited the plaintiff, because it was necessary under Regulation XXVII. 1814, Section 37, Clause 3, that the Government pleader should receive his order either from Government, or from some officer or officers empowered by some law to superintend and to furnish instructions for conducting such suit, and it could not be shewn under what law a salt agent could have superintended and furnished instructions for conducting a suit for the price of a house by an order given *ex-officio*.

It has however been ruled that the order was sufficient; and as the supposition must be that the salt agent had authority to sell the house, and it was evident by the proceedings that the house was sold for the amount stated in the plaint, I see no reason to differ in opinion from the principal sudder ameen on that point. The house was sold and payment may have been tendered at the time, but not received for whatever reason, but it was demanded on the 11th July 1838, and has not been paid since. Under these circumstances I see no reason to differ in opinion from the principal sudder ameen on the point of interest. Mrs. Barbara Margaret Cameron objects to the suit as she has not been made a party to it, but it does not appear that she had any thing to do with the transactions, and she can bring any suit she pleases for her own rights. I confirm the decision of the principal sudder ameen. The appellant must pay the costs of the appeal.

THE 21ST NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 24 of 1844.

Appeal from Moulvee Muftee Lutf Husain, 2nd Principal Sudder Ameen.

Gudadur Gose, (Defendant,) Appellant,

versus

Syud Keramut Alee, (Plaintiff,) Respondent.

THIS was a suit for rupees 293-15-8, arrears of rent from 21st Magh 1239, till 9th Sawun 1240, in which the principal sudder ameen gave the plaintiff a decree for rupees 229-1-2. In appeal the plaintiff was nonsuited, because he had previously brought an action for rent for the years 1238, 1241, and 1242, while this arrear was due, and by dividing his claim he had foregone his right; but it has been ruled that rent for each year forms a distinct cause of action, and the suit has been ordered to be tried on its merits.

The rent of the property from which rent is claimed is rupees 1883-3-8, and Gudadur bought a 5½ annas separated share of it at a sale for arrears of rent on the 22d Magh 1239, and immediately sold it (as he states) to one Sumboonath. Gudadur however was the purchaser.

On the 26th Assar 1240 Sumboonath applied to have his name registered as proprietor, and on the 19th Phagoon 1242 Gudadur applied that Sumboonath's name might be registered. The mutation was concluded on the 11th Assin 1244, by an order of the collector that arrears should be demanded from Sumboonath. The objection raised by the defendant in the case before the principal sudder ameen was that he was not in possession, and should not have been sued; but since the point of his having been liable for periods both before and after the time for which this rent was demanded, had been disposed of in the former suit by a principal sudder ameen, I am unable to try the merits of that point, and as it is not denied that rent is due, it must be paid by the appellant. I confirm the decision of the principal sudder ameen. The appellant must pay the costs.

THE 21ST NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 56 of 1846.

Appeal from Baboo Loknath Bose, 2nd Principal Sudder Ameen of Jessore.

Eshur Chunder Gose, (Defendant,) Appellant,

versus

Kalee Pershad Chukabutee, (Plaintiff.)

THIS was a suit for 276 rupees, 4 annas, arrears of rent of the year 1252, in which the principal sudder ameen gave the plaintiff a

decree. Kalee Pershad is a duniyadar and Eshur Chunder Gose is his under-tenant, whose rent is allowed to have been rupees 647-5-3, but he states that he had it diminished by the zemindar, which is the point in dispute; but since he produced no proof of this assertion before the principal sudder ameen, and since a summary decision had been given against him at the higher rate only the year before, from which he made no appeal within the year, I think the decision of the principal sudder ameen was correct, and I confirm it without calling on the plaintiff to respond to this appeal.

THE 21ST NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 319 of 1846.

Appeal from Kylas Chunder Deb, Moonsiff of Singhea.

Mookeem Gazee, Mirza Alee, and three others, Appellants,

versus

Sumeerudee, Plaintiff.

THIS was a suit for arrears of rent, with interest due on it, amounting to rupees 134-13-8, which had accrued from the year 1244 to 1251. The suit was instituted on the 13th April 1846. The period allowed for the attendance of the defendants with their defence would have expired on the 27th May, but they appeared by their attorney on the 26th May, however no defence had been offered up to 13th July 1846, when the moonsiff decided the case in favor of the plaintiff. I see no reason why the suit should not have been defended before the moonsiff. The moonsiff decided the case by a decision determining the amount of rent of the juma passed on the 16th December 1845, being a day after the period for which the rent is demanded in this case, and thus he made that decision have a retrospective effect which it had not got before. It might have been better to have had the amount of arrears determined at once according to the annual amount of rent, but as the rent of each year may form a separate cause of action according to the order passed on the petition to the Sudder Dewanny No. 156 of 1845, I see no reason to call on the plaintiff to respond to this appeal, and I confirm the decision of the moonsiff.

THE 27TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 44 of 1846.

Appeal from Moulvie Muftee Lutf Hossen, First Principal Sudder Ameen of Jessore.

Hurrees Chunder Biswas, (Plaintiff,) Appellant,

versus

Geres Chunder Chatorjea, Gour Chunder Ray, Ruttun Monce Dossea, for self and minor son Ram Churn Ray, Bolanath Chatorjea, Jugonath Kapalee, and fifty other persons, (Defendants,) Respondents.

THIS was a suit for the possession of a juma said to contain 22 beegas of land situated in Batoorea in pergunnah Mahomedshae, and formerly held free of Government revenue but now resumed.

The plaintiff states he was ousted in the beginning of the year 1249, since which time he requires mesne profits, which, with the value of the land, make the amount of the suit to be rupees 771-9. The principal sudder ameen dismissed the suit, for it was evident that the plaintiff's documents have all been lately manufactured, and he did so notwithstanding that Gour Chunder Ray and Ruttun Monce Dossea had acknowledged that one of them, viz. a potta, bearing date 1215 B. E. and granting 22 beegas of land, as described in the plaint, was genuine. It is not denied that those two persons are related to the plaintiff; and, from examination of the plaintiff's case alone, even had Geres Chunder Chatorjea no documents to prove his right in a juma, which he urges there is a conspiracy to dispossess him of, but which he states, (and his documents shew it,) is only 8 beegas, I should have agreed with the principal sudder ameen in opinion. I confirm the decision of the principal sudder ameen. The appellant must pay the costs of the appeal.

THE 28TH NOVEMBER 1846.

PRESENT: E. BENTALL, JUDGE.

No. 38 of 1846.

Appeal from Moulvie Muftee Lutf Husain, 1st Principal Sudder Ameen of Jessore.

Phul Bebee, Panoo Bebee, Japo Bebee, Churamonee Ghose, Banee Madub Ghose, and Tahir Mohomud Biswas, (Defendants,) Appellants,

versus

Debnarain Ghose, (Plaintiff,) Respondent.

THIS was a suit to get possession of 100 beegahs, 13 cottahs of land, situated in Magoorah and Mohomudpore, in the 12 annas division of pergunnah Syudpore, which land had been decided to be in

the possession of the defendants, under Act IV. of 1840, on the 26th December 1844. The suit was also for mesne profits, and was valued at rupees 1142-9-17½.

The circumstances of the suit are as follows. One Surjonath Moonshee had got a decree against Sheikh Abadan for a sum under rupees 300, and this property was attached in execution. The three first named of the appellants are the heiresses of Sheikh Abadan. While the property was under attachment two pottahs are said to have been given, one to Debnarain Ghose, dated 12th June 1844, and registered 22d June 1844, at a rent of rupees 92-4, the other to Banee Madub Ghose, dated 21st June and registered 25th June, at a rent of rupees 99-14-7; for each pottah, a fine of rupees 300 is said to have been paid.

On the 1st July 1844 Surjonath, the decree-holder, petitioned the court that he had received from the agent of his debtor the amount of his decree; this agent is said to be a relation of Japo, but she denies being acquainted with him. On the 2d July, Panoo Beebe tendered to the court the amount of the decree against her, and the moonsiff agreed to take it and to hold it in deposit. When the pottah of Debnarain Ghose was being registered on the 22d June, a person called Tyhur Mohomud appeared before the registrar and stated that he protested against the deed, for Panoo Beebe, &c., and that he was a relation of hers, but he could shew no authority for his conduct.

The principal sudder ameen gave a decree to Debnarain Ghose, and I think his decision was correct for the following reason. The pottah given to Debnarain Ghose is written on paper which was bought on the 11th June, being ten days before the date of the pottah given to Banee Maudub, and it was bought by the above named Tyhur Mohomud, or some one taking his name, and it is very improbable that Tyhur Mohomud should have bought the paper and that it should have come into the possession of Debnarain Ghose unless it had been bought for his pottah; and it is equally improbable that, if Debnarain Ghose had bought the paper in the name of Tyhur Mohomud and forged the pottah, he should have waited ten days after he had forged it before he got it registered, particularly as a brother of Debnarain Ghose is the sirishtadar of the 2d principal sudder ameen of Jessore and must have known the necessity of getting it registered. I think it far more likely that Banee Madub, who had been in treaty for the land, was disappointed at not getting it, and then offered a rather larger rent, and got another pottah, after the date of the first, with the hopes of keeping possession which was to have been given to him. I confirm the decision of the principal sudder ameen. The appellants must pay the costs of the appeal.

ZILLAH MIDNAPORE.

THE 16TH NOVEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 8 of 1846.

*Regular Appeal from the decision of the Moonsiff of Anundpore,
passed on the 6th of August 1846.*

Gooroopersaud Koleah, (Defendant,) Appellant,

versus

Kalleepersaud Doss, (Plaintiff,) Respondent.

THIS was a suit for arrears of rent for the years 1248 to 1252.

The moonsiff states that the jumma wassil baquee papers filed by the plaintiff from the year 1245 and subsequent years, prove what payments were made by the defendant and his co-sharers, and the balance against him. The gomashtah of the plaintiff also gave evidence to the effect, that the defendant and his brother took a pottah of the land held by them, and afterwards partitioned out the land to themselves and another brother; and paid their respective quotas separately. It was also shewn that the share of one of them was sold in satisfaction of a decree of court, on the grounds of the partition having been really made and agreed to. The defendant could bring no proof to corroborate the defence set up by him, and the moonsiff decreed the arrears claimed, amounting to 104 rupees and 14 rupees costs.

The appellant urges in appeal that the pottah he holds is a joint pottah granted to himself and his brother, and that the plaintiff cannot sue him separately for any arrears of rent. That there are two gomastahs, one named Muthoor Mohun who gave evidence for the plaintiff in the moonsiff's court, and another Nobbinkissore Mitter who collected his arrears and gave him a receipt for them; that these receipts are in the joint names of himself and brothers, and could not be produced by him because filed in another suit, from whence they were procured and given to his vakeel.

I consider these pleas of the appellant are worthless. It appears that after he and his brother obtained the joint pottah they admitted their younger brother into a share of the lands, and divided them equally amongst themselves. This is clearly proved from the papers of a case of execution of decree, in which the share of one of the brothers was attached, and the present appellant attempted to prevent the sale by claiming the lands as his own. This opposition on his part was overruled, the share of one brother sold for the

decree, and the share of another on his death has since been held by his heirs, leaving no doubt that the separation of interests was complete and of long existence. The receipts filed by appellant are apparently recently prepared, and are signed by Nubbochunder and by Nubbokissen Mitter, though said to be granted by one person. They could not have been filed in any case, as stated by the appellants, because there is no endorsement on them to that effect. I have no doubt this was a false representation, and that they have been recently prepared. I therefore confirm the moonsiff's decree, with costs against the appellant.

THE 19TH NOVEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 20 of 1846.

Regular Appeal from the decision of the Moonsiff of Tumlook, passed on the 29th of December 1845.

Hurreekisto Bhuya, (Defendant,) Appellant,

versus

Jharroo Putnaik, (Plaintiff,) Respondent.

THE appellant was sued in the moonsiff's court for the amount of a bond dated the 21st of Maugh 1241 Umlee, the principal and interest of which amounted to 53 rupees, 5 annas. He denied the debt, and declared the suit was brought against him from motives of enmity, in consequence of his having obtained a decree in a suit in which the plaintiff was defendant, and had also prevented his measuring certain lands which he and others held under the plaintiff.

The moonsiff decreed the amount claimed, on the evidence of two witnesses and the writer of the bond.

The appellant, after recapitulating the pleas brought forward in the lower court, urges the following facts as proofs of the claim having been got up against him, namely, that the bond refers to a period of ten years back; is written on stamp paper purchased in 1831 A. D. (1238 Umlee) at a place called Futteebad, seventy or eighty miles distant from the plaintiff's place of residence; that though the paper is very old, the writing is quite fresh; and that the writer of the bond and the two attesting witnesses are relatives or servants of the plaintiff.

I observe after examining the record that all these pleas are true: the stamp paper is evidently old, and has been creased and worn in several places, but these creases are carefully removed from the written side of the paper as if smoothed out by some process, the writing is fresh, and the document appears to have been drawn out and filed at the same time. It is not likely that a bond of this nature would be

preserved without crease or mark for ten years; and coupling this circumstance with the distance at which the stamp was purchased, and the near connection existing between the plaintiff and his witnesses, and the length of time that has elapsed before bringing the suit, (the period of the bond being for only three months,) I come to the conclusion that the claim is a fictitious one, and, reversing the decision of the moonsiff, I decree the appeal with costs against the respondent in both courts.

THE 23D NOVEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 143 of 1846.

*Regular Appeal from the decision of the Principal Sudder Ameen,
passed on the 22nd May 1846.*

Abdool Khaluck, (Plaintiff,) Appellant,

versus

Collector of Midnapore, (Defendant,) Respondent.

THIS action was brought by the plaintiff to recover the sum of 1579 rupees, being the auction price, with interest, which he had paid on three lots of property sold by the collector under the power vested in him by Section 3, Regulation XI. of 1822. The cause of action arose out of the following circumstances. The arrears of revenue due to Government not having been realized by the sale of the landed property belonging to one Choonee Khatoon, some personal property belonging to her was attached, and offered for sale; of which the plaintiff purchased 3 lots for 929 rupees on the 29th June 1839. After payment of the purchase money the plaintiff refused to take a bill of sale offered by the collector, because the words "huck huckook" of Choonee Khatoon were inserted in reference to the property sold.

The plaintiff appealed to the commissioner to have these words cancelled, but that authority rejected the appeal, and this suit was instituted to recover the purchase money with interest; after which the collector called upon the plaintiff to state whether he was willing to receive back his money without interest, which offer he accepted, but his money was not returned to him. The plaintiff urged in the lower court that the lots put up for sale did not specify the "huck huckook" of any one, but were as follows:

Situated in Colonel Gola in the city of Midnapore, the property of Choonee Khatoon.

Lot No. 1. A thatched dewankhana with two verandahs.

Lot No. 2. A pukka roofed two storied house, with beams and burgahs and doors.

Lot No. 3. A pukka roofed school-room, with beams, &c.

The principal, sudder ameen dismissed the suit, remarking that the plaintiff purchased the rights of Choonee Khatoon, and is only entitled to receive a bill of sale specifying such rights. The appellant merely recapitulates his ground of action, and urges that, as the collector offered him the purchase money back without interest, he was at any rate entitled to a decree to that extent, if the principal sudder ameen did not consider him entitled to the whole of his claim.

JUDGMENT.

It appears that the property was sold according to the return made by the attaching officer, as the property of Choonee Khatoon, and that the plaintiff, after purchasing, and paying for three lots, refused to take a bill of sale because according to custom the words "rights and interests" of the reputed owner were inserted in the document.

The plaintiff has not proved in any way how his interests were damaged by this insertion, which is strictly according to custom in the sale of personal property by the officers of Government. By never attempting to take possession or exercising his rights in any way, no court can form a just estimation of any loss sustained by him in the transaction; and that he has really any grounds for an action appears problematical. The proper way would have been for the plaintiff to have proceeded under his bill of sale to take possession of his purchase, and had he been opposed, and the matter brought to issue in that way, he might have sought compensation with propriety; as it is, it appears to me he has no remedy at law against the collector.

THE 23D NOVEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 1 of 1846.

Appeal from the decision of Mr. C. F. Montessor, Deputy Collector of Zillah Midnapore, passed on the 8th of June 1846.

Motiram Samaee and others, (Defendants,) Appellants,

versus

Bindrabun Chund Mussant and others, (Plaintiffs,) Respondents.

THE case was taken up and decided by Mr. Montessor under Section 30, Regulation II. of 1819, as a suit to resume five beegahs and thirteen cottahs of māl land, fraudulently held rent free by the appellants, and a decree passed in favor of the respondents.

On a perusal of the pleadings filed by the plaintiffs in the deputy collector's court, I observe the tenor of their plaint is as follows: that they purchased mehāl Magoree at public sale towards the end of the year 1244 for 14,900 rupees, they were regularly placed in

possession of the property and collected the rents from the ryots; that having no papers of the mehal made over to them, they sent an ameen to register the dâgs, and in 1245 were dispossessed by the defendants, appellants, of 5 beegahs, 13 cottahs of their mal land, who also refused to pay rent on the plea that it was rent free. They therefore prayed the collector would restore to them possession of the land, and award the sum of 241-2 with interest, as rent appropriated by the defendant from 1245 to 1252 Umlee.

As a suit for possession and back rents cannot be brought under Section 30, Regulation II. of 1819, I consider the plaintiffs in this action must be nonsuited. It has been urged in appeal by the respondents' pleader that this mode of expression is constantly used in bringing an action under Section 30, Regulation II. of 1819, and that the printed reports of the Sudder Court published monthly afford sanction for the precedent; yet I do not find any case in which the point has been argued, and determined by the Court at large. The case No. 177 of 1843, decided by the Court on the 28th of January 1846, in which Bulram Punda and another are appellants, and Sheik Goolmahomed is respondent, was admitted to special appeal on the ground "that an action under Section 30, Regulation II. of 1819, ought to have been to resume and assess unlawful rent free land, and not to obtain possession of the same," and as the point is not again referred to in the final decision of the Court, I cannot suppose it was finally disposed of, and am led to infer that the point of law did not specially affect the merits of the case, and therefore consider myself at liberty to apply the law to the best of my judgment. I therefore consider the appellants entitled to a decree, and nonsuit the plaintiffs; but as the question of jurisdiction was not urged by the appellants in the lower court, I adjudge both parties to pay their own costs.

THE 24TH NOVEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 129 of 1846.

Regular Appeal from the decision of the Sudder Ameen, passed on the 16th May 1846.

Kishoremohun Ghose, (Plaintiff,) Appellant,

versus

Durponarain Mohapatter and Kennaram, (Defendants,) Respondents.

THE plaintiff stated in the lower court that he lent some money to the father of the defendant, Kennaram, and had a farm of five villages made over to him on a lease of 13 years, viz. from 1242 to 1254 Umlee, but as these villages were at the time let in farm to the defendant, Durponarain, on a lease expiring at the end of 1244

Umlee, the father of Kennaram gave him a burât on the jumma to the amount of rupees 100, 12 annas per annum, to be paid to him by the defendant, Durponarain, while his lease continued, who gave him a kubooliut or acknowledgment to the same effect. That notwithstanding this, he had only received from Durponarain the sum of 39 rupees in 1242, 15 rupees in 1243, and 13 rupees in 1244, and never received the balance, which, with interest, now amounted to 483 rupees, 11 annas, 11 pie.

The defendant, Kennaram, acknowledged the transaction as concluded by his father Goorooershah, and stated that he had received the full jumma of the farm from Durponarain for 1242, and paid plaintiff the sum of 100 rupees, 12 annas, which he was entitled to, and held his letter acknowledging the same.

Durponarain acknowledges having taken a farm including these five villages, but denies having given any kubooliut to plaintiff, and in consequence of the arrangement entered into between the plaintiff and Goorooershah, he entirely released these villages to the plaintiff after 1242 Umlee, and took a new farm from Goorooershah.

The sudder ameen considers the letter filed by Kennaram acknowledging the payment of 100 rupees, 12 annas to plaintiff as spurious, as the witnesses brought forward to establish the fact of the payment cannot both speak to the time when the payment was made. The sudder ameen releases Durponarain from all liability on account of 1242, as Kennaram acknowledges having received from him the full jumma of the farm for that year; the witnesses also proved to the sudder ameen's satisfaction that the plaintiff had been put in possession of the five villages in 1243, and collected the rents and sued a ryot under Regulation VII. for the balance of the year. The sudder ameen did not consider the kubooliut alleged to have been given to plaintiff by Durponarain to be genuine, and observes that though this cause of action is of long standing, the plaintiff never appears to have moved in the matter, till after he had been sued by the defendant, Durponarain, for a debt in the moonsiff's court, which claim had been decreed against him and execution taken out for the amount. The lower court therefore entirely released Durponarain from the claim in this suit, but as Kennaram had acknowledged the receipt of the full jumma for the year 1242, and had failed to prove satisfactorily the payment of the 100 rupees, 12 annas, due out of it to the plaintiff, the balance for that year stated to be unliquidated, with interest and costs in proportion to the amount decreed, was awarded to the plaintiff, to be paid by Kennaram.

The appellant urges in his appeal that he never had possession of the five villages as alleged by Durponarain, that the witnesses who deposed to this are creatures of that defendant, and that Radhoo Mundul, who, the ryots stated, received the rents on his part, is no servant or authorized agent of his. That the Regulation VII.

case decreed in his favor was against a ryot who performed service in lieu of paying rent, and having neglected his duty was sued for the rent of his jote.

This court sees no reason to interfere with the sudder ameen's decision. There can be no doubt the plaintiff held complete possession of the villages let in farm to him since 1243. The pleadings, filed by *him* in the summary suit alluded to, state him to have taken the villages in farm, and to have received the rent through Durponarain for the year 1242, and after that year to have been put in possession, taking kubooliuts from the ryots and collecting the rents from them. The whole cause of this appeal is evidently an attempt to injure Durponarain, against whom all his arguments are levelled; and as there appears no valid grounds for granting an appeal, this petition is dismissed.

THE 28TH NOVEMBER 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 119 of 1846.

Regular Appeal from the decision of the Principal Sudder Ameen, passed on the 6th May 1846.

Musst. Kumlamunee, widow of Koornarain Paul, (Plaintiff),
Appellant,

versus

Raja Prithi Bullub Paul, (Defendant,) Respondent.

THE plaintiff pleaded in the lower court that her husband Koornarain Paul purchased the talooks Dhaunseree and Bissonathpore from Koornarain Roy. After purchase possession was withheld, which obliged the plaintiff's husband to bring an action against Koornarain Roy for possession of the property. While this suit was pending Koornarain Paul the plaintiff's husband died, and as their son Gooroopershad was but a child, the plaintiff was permitted to carry on the suit as representative of her deceased husband, and in this capacity finally obtained a decree and was put in possession of the property; a proceeding being also forwarded to the collector to register her name as proprietor. In due time her son came of age, and died, leaving a widow; and her husband's nephew, the father of the defendant, having commenced disputes and committed affrays for the possession of the talooks, the matter was brought before the fouzdar and session courts, and the defendant declared entitled to possession. This action is brought to set aside the decision of the session court and to recover possession.

The principal sudder ameen, after a lengthened enquiry into the rights of the parties, came to the conclusion that the talooks had been purchased by the defendant's father in the name of Koornarain Paul, who at the time managed the zemindaree affairs of the family. He states that the daily accounts of the defendant submitted to his perusal shew that the expences of purchase and of securing possession, were all defrayed by the defendant's father; that the mofussil accounts are all in the defendant's possession, and these prove the management to have remained in his hands. The lower court therefore dismissed the claim.

The appellant urges in appeal that if her husband did not purchase the talook, why did not the real purchaser come forward at her husband's death, and oppose her either in carrying on the suit for possession as her husband's representative, or subsequently in being registered as proprietor of the talooks? That in consequence of her son's minority at the time of her husband's death, the papers alluded to by the principal sudder ameen remained in the family toshakhanah, and as soon as disputes arose between her son and the rajah (the defendant's father) they were all secured by the latter. That a case exactly similar to this regarding her right to the "suttee" talook had been brought before the courts, in which the defendant's father claimed the property as purchased by him in her husband's name, but a decree had been given in her favor and confirmed by the Sudder Court. That her husband as uncle of the defendant's father had carried on all the affairs of the zemindarry, but was not his naib or dependent, and that the disputed talooks were purchased by him, the kuwala drawn out in his name, and possession under the court's decree given to her after her husband's demise, which possession she had retained till the illegal acts of the defendant's father had deprived her of it.

JUDGMENT.

From the wording of the plaintiff's plaint, and also from the pleadings in this court, it is clearly evident that the plaintiff seeks to recover possession of the disputed talooks, on the grounds that she was the party in possession when the suits under Act IV. of 1840 were brought before the criminal courts, and was wrongfully dispossessed by the courts' orders: she therefore seeks to have those orders set aside, and to be placed in the position she occupied before the interference of the criminal authorities. The reason of the plaintiff pursuing this line of plaint is obvious enough: she has no rights of her own to stand upon. The only rights she ever possessed were those accorded to her by the law to serve a temporary purpose, and only existed so long as the rights of her minor son remained in abeyance. It is shewn by her own pleadings that her son Gooroopershad Paul died after attaining his

majority, leaving a widow ; her rights therefore as representative of her husband must have ceased long ago ; and there is nothing in this case to shew how they were ever revived, or under what title or assumption she could possibly retain possession of his property. If then the plaintiff possesses no rights *per se*, I am of opinion she cannot bring an action to set aside a decision under Act IV. of 1840, merely on the plea that such decision was recorded on insufficient grounds. That enactment distinctly declares that the magistrate shall maintain in possession such person as he deems entitled to retain it, "until the rights of the parties disputing be determined by a competent court." It therefore appears to me incumbent on the civil court to limit its enquiries to the question of the rights of the party seeking to recover possession of the disputed property, without looking to the circumstances which influenced the criminal court in its decision. In this case I cannot recognise the right of the plaintiff as a claimant for the property in dispute, and on this ground, and not on those recorded by the principal sudder ameen, I dismiss the appeal with costs.

ZILLAH MOORSHEDABAD.

THE 26TH NOVEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 92 of 1846.

*Regular Appeal from the decision of Muddun Mohun Chowdry, late
Moonsiff of Kandhee.*

Kasheenath Banoorjee, Appellant, (Plaintiff,)

versus

Deenoobundhoo Das, Respondent, (Defendant.)

Rupees 47, 6 annas. Bond.

THE plaintiff stated that on the 14th Assar 1251 B. S., the defendant borrowed of him the sum of 31 rupees, executing a document by which the defendant bound himself to pay the plaintiff in rice in the husk, proportionate to the sum lent, with interest. The plaintiff sued at the rate of 10 arrees per rupee.

The defendant denied the justness of the demand, stating that he held a lease for some land in a village of which the plaintiff is agent on the part of the landholder, and that the plaintiff demanded a *douceur* in addition to the rent paid, which being refused, the plaintiff and others accused him of being a man of bad character, but that he was acquitted of the charge by the magistrate, and that the present suit was malicious.

The plaintiff produced witnesses, to prove the execution of the bond and other points, who are unable to write or read; and the moonsiff, disbelieving their evidence, dismissed the claim.

I find that the paper on which the bond is engrossed was sold nearly two years before the date of the document; but as the evidence of the writer is available, whose attendance, though he was duly served with a subpœna, the moonsiff took no steps to enforce, I consider the investigation incomplete, and return the case for retrial, the present officiating moonsiff will call for the criminal records for perusal. The appellant to receive back the amount of stamp on which the appeal is written.

THE 26TH NOVEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 160 of 1846.

*A Regular Appeal from the decision of Muddun Mohun Chowdry,
late Moonsiff of Kandhee.*

Lal Mohun Shahanah, Appellant, and Ramjoy Shahanah,
(Defendants,)

versus

Sreedhur Roy, Respondent, (Plaintiff.) .

* Rupees 15, 3 annas, 1 gundah. Bond.

THE respondent, plaintiff, sued to recover rupees 11, lent on a bond. The appellant, Lal Mohun Shahanah, in denying the justness of the demand, urged that in 1251 B. S., he borrowed 5 rupees of the plaintiff, and that the bond must have been altered.

I find that the moonsiff has decided this case on the evidence of witnesses, who can neither write nor read, and that he has not taken any steps to cause the attendance of the writer of the document. The case is accordingly returned for re-trial. The appellant to receive back the amount of the stamp on which the appeal is written.

THE 26TH NOVEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 165 of 1846.

*A Regular Appeal from the decision of Muddun Mohun Chowdry,
late Moonsiff of Kandhee.* .

Teloke Shah, Appellant, (Defendant,)

versus

* Rajoo Shah, Respondent, (Plaintiff.)

Rupees 30, 8 annas, 5 gundahs. Balance of account.

THE respondent sued the appellant to recover the sum of 30 rupees, 8 annas, 5 gundahs, the value of treacle purchased by the latter, who is a spirit vendor, who, in reply to the suit denied its justness, urging that he had paid for all he had taken, and that the suit had been brought in consequence of his having abused the respondent for having given him bad treacle.

The moonsiff has decided this case on the evidence of illiterate witnesses, and without taking that of the writer of the account book filed by the plaintiff. It is therefore returned for retrial.

THE 27TH NOVEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 185 of 1846.

*A Regular Appeal from the decision of Shekh Gholam Furreed, 1st
grade Moonsiff of Hurhurparah.*

Sumbhoo Mundul, Appellant, (Defendant,)

versus

Madub Sein and Kenoo Shekh, Respondents, (Plaintiffs.)

* Rupees 6-8 annas. Price of mulberry.

THE respondents sued the appellant for the sum of 6 rupees, 8 annas, which he agreed to pay for mulberry plant, but failed to cut, and which the respondents were obliged to cut to ensure a future crop.

The appellant admitted having made the bargain as stated, but urged that the respondents sold the crop to another party. The case being satisfactorily proved, and the appellant not having taken any measures to prove his assertions, the moonsiff decreed the case, in which judgment I concur.

THE 27TH NOVEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 90 of 1846.

A Regular Appeal from the decision of Molovec Mahomed Mobeen, Moonsiff of Gowas.

Shahabdee Mundul, Appellant, (Defendant,)

versus

Gholam Husain Mundul, Respondent, (Plaintiff.)

Rupees 50-0-7. On account of a deposit.

THE respondent sued the appellant and a man named Kurreem Bukhsh under the following circumstances.

Kurreem Bukhsh, having a small grove of trees to dispose of, employed the appellant to effect a sale of it, which the respondent wished to purchase, but being apprehensive that the landholder would not allow him to cut down the trees it was arranged that an advance of 50 rupees should be made in the first instance; the respondent, not having the sum agreed upon, paid over to Shahabdee 39 rupees, saying that he would pay the remaining 11 rupees, when it was ascertained that the landholder would not interfere. The respondent, not having been permitted to cut the trees, brought this action to recover the amount advanced with interest.

The appellant and Kurreem Bukhsh in their respective answers to the suit denied all knowledge of the demand, saying that the respondent held no document. Kurreem Bukhsh pleaded further that he had several groves of trees, but that the plaint had not specified what one in particular had been advanced for, and other minor points.

The particular transaction adverted to in this case having taken place between the appellant and respondent, the moonsiff gave a decree against the former on the evidence adduced, but as there is no written agreement, and the case at present rests on oral testimony, I think it requisite with a view to ascertaining its true merits to return it to the moonsiff, for enquiry to be made regarding the particular property the case refers to, as without some corroborative evidence it is difficult, in a suit of this nature, to arrive at a satisfactory conclusion. The case is returned for re-trial. The amount of stamp fee will be returned.

THE 27TH NOVEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 172 of 1846.

A Regular Appeal from the decision of Mr. H. S. Thompson, late 1st grade Moonsiff of Jungypoor.

Kashub Shah, Appellant, (Defendant,)

versus

Sheeboo Shoondree Dassea, Respondent, (Plaintiff.)

Rupees 8, annas 15. Price of thread.

THE respondent sued the appellant for rupees 8, annas 15, balance due on account of thread supplied. The appellant, in denying the claim, urged that the suit had been maliciously brought in consequence of his having had a quarrel with the respondent's uncle. The case having been satisfactorily proved, and the appellant not having conformed to the orders of the court, the moonsiff gave a decree for the amount sued for, and as I concur in the decision of that officer I dismiss the appeal with costs.

THE 27TH NOVEMBER 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 174 of 1846.

A Regular Appeal from the decision of Muddun Mohun Chowdry, late Moonsiff of Kandhee.

Ramsoonder Pal, Appellant, (Defendant,)

versus

Ramgopaul Rai, Respondent, (Plaintiff.)

Rupees 31-8. Agreement.

THE respondent sued the appellant for a balance due on a deed of agreement for 25 rupees, after deducting 1 rupee, 8 annas, paid.

The appellant, in denying the justness of the demand, pleaded that in consequence of a quarrel which existed between him and the respondent on account of mulberry plant, the respondent seized him and carried him to his house, where he forcibly made him attest the document by touching a pen, and that many people were present at the time who would confirm his statement.

The moonsiff decreed the case in favor of the respondent, from which decision the appellant appeals to this court.

On looking at the document I find that it is drawn out as being the document entered into by the appellant, "son of Kasheenath Pal," but it bears the contracting signatures of Kasheenath and Ramsoonder. I conclude this is a mistake of the person who wrote their names, the appellant being unable to write, more particularly as the respondent in his plaint distinctly states that the appellant's father died three years before the date of the instrument. The deed has been attested by one witness who can read and write and the writer of it is said to have demised. Thus the only available evidence on the part of the respondent has been taken; but as the appellant admits the execution of the deed, pleading that he executed it by a recourse to force, it was incumbent on the moonsiff to call upon him to offer proof to that effect, which he has omitted to do. The moonsiff's decision therefore is incomplete and the case returned to the new moonsiff appointed in his stead for re-trial.

ZILLAH PATNA.

THE 9TH NOVEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 77 of 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen, Mr. E. Dacosta, dated 23rd September 1845.

Moost. Hosseinee Begum, (Plaintiff,) Appellant,

versus

Rajih Torulnerayen Singh and Moost. Luckhoo Kooer, mother and guardian of Buhadoor Singh and Moorlee Dhur, (Defendants,) Respondents.

To obtain possession of mouza Shapore Raseesa, Goondur beegah, and a bazar in pergunnah Tilhara, zillah Patna, the whole valued at rupees 1,888, together with mesne profits amounting to rupees 3,087-5-8.

The appellant (plaintiff) sued the respondents (defendants) in the lower court, to reverse the decision of the deputy magistrate under Act IV. of 1840, confirmed in appeal by the session judge, and to obtain possession of mouza Shapore Raseesa from which she had been ousted by the respondents under the above decision. It would appear that the investigation in the foudaree department had reference to some land called Goondur-beegah and bazar shops, and that the point turned on whether this disputed portion was in the limits of mouza Raseesa held by the appellant, or of mouza Raseesa jageer which the respondents had acquired by purchase at public auction for arrears of revenue, and which had originally been held by the appellant. The 1st principal sudder ameen dismissed the claim of the appellant, considering it in no way proved that she had been ousted from the lands of Raseesa, and that it was evident from the settlement papers that the disputed portion of Goondur-beegah and the bazar, the real matter at issue, constituted a portion of Raseesa jageer, the property of the respondents, and not of Raseesa the village of the appellant. In appeal the chief plea was that the disputed portion appertained to mouzah Raseesa, but I concur with the lower court in disallowing it. There are no official papers to show that Goondur-beegah and the bazar formed any part of the lands for which appellant settled with the revenue

authorities for mouzah Raseesa in 1816, and this is again confirmed by Goondur-beegah and the bazar being entered in the measurement papers of 1825 as appertaining to Raseesa jageer, for which the ancestor of the appellant settled in 1826. Now it is against all probability that the ancestor of the appellant should, without making any demur, allow land to be measured, and settle for them as appertaining to one village, when he had antecedently entered into engagements for this very land under another name. It is therefore ordered that the appeal be dismissed with costs, and the decree of the lower court confirmed.

THE 11TH NOVEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 60 of 1845.

Regular Appeal from a decision passed by the Additional Principal Sudder Ameen, Mohumud Ibrahim Khan, dated 12th July 1845.

Shetab Rae and Khajeh Bundeh Ali, (Defendants,) Appellants,

versus

Sheikh Ahmudoollah, (Plaintiff,) Respondent.

To recover Rupees 324-14-0, principal and interest, on account arrears of rent.

The respondent sued the appellants for rents of land leased to them for the year 1251 F. S. The appellants plead that the rents have been paid, and produce receipts of the respondents for 1250 and 1251, assuming which to be valid would leave a balance of 219 rupees for the year 1251 against the appellants, while their statement and that of their witnesses is to the effect that all but 17 rupees has been paid. The respondent proved his claim by filing the kooboolout of the appellants, and the jumma wasil bakee of 1251, substantiated by witnesses. The lower court rejected some of the receipts filed by the appellants for the years 1250 and 1251, the seal and signature of the respondent on them being different from the others, the validity of which the respondent admitted, and decreed the case in favor of the respondent. The pleas in appeal refer to the validity of the receipts and evidence rejected by the lower court. From a perusal of the papers, I entirely concur in the view taken by the principal sudder ameen, and confirm the decree, dismissing the appeal with costs.

THE 19TH NOVEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 67 of 1845.

Regular Appeal from a decision passed by the Additional Principal Sudder Ameen, dated the 14th August 1845.

Bhoop Sing, Dhaun Singh, and Chutterpatee Sing, (Plaintiffs,) Appellants,
versus

Shewshunker Singh, Meetun Singh, after his demise, his wife Moost. Chowraso Kooer, mother and guardian of Sajeewunlall and Munear Sing, (Defendants,) Respondents.

To set aside the decision of the additional principal sudder ameen dated 14th August 1845, and to have their (appellants') names entered in the collector's register for a portion of mouza Kocelawan, pergunnah Shajehanpore.

The appellants sued to have their names entered in the collector's register for a portion of mouza Kocelawan purchased from the respondents under a deed dated 27th March 1838. The respondents admit the sale, but state the purchase money was never paid, and that pending this the deed after being registered was deposited with a third party Dhaka Lall, that this was entered in the deed at the time, and that in conformity with this appellants executed an ikrarnameh dated 15th May 1838, stating they would pay the remaining balance before Jeith 1246 or June 1839, and in default the transaction should be considered as determined and the former instalment forfeited. The appellants failed to pay the balance, and on the death of Dhaka Lall, which occurred about 3 years ago as admitted by both parties, appellants got possession of the deed and now prefer this suit. The second principal sudder ameen considered the proofs of the appellants as to the payment of the purchase money insufficient; while the ikrarnameh had been verified by witnesses, and was borne out by the deed having a memo: on it written by the registry moonshee, that it had been made over to Dhaka Lall. The appellants do not allude to the deed having ever been with a third party. The case was dismissed by the lower court. The pleas in appeal are the truth of the evidence as to the payment of the purchase money under the terms of the deed and possession obtained in conformity with it. But, from a perusal of the papers, on neither of these points do I think the evidence satisfactory compared with that adduced by the respondents. It is also proved by the respondents that after the date of sale the land was in 1839 pledged as security by the respondents to the collector, their possession was established, and no claim preferred by the appellants. It is therefore ordered that the appeal be dismissed, with costs, and the order of the lower court be confirmed.

THE 23D NOVEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 73 of 1845.

Regular Appeal from a decision passed by the Additional Principal Sudder Ameen, Mahomed Ibrahim Khan, dated 18th September 1845.

Keher Singh, Appellant, (Defendant,)

versus

Thagoo Raoot, Respondent, (Plaintiff.)

To recover rupees 1,544-6-4, amount of principal and interest of a bond.

The respondent sued the appellant for the amount of principal and interest of a bond dated 25th Falgoon 1247. The deed was filed and proved by the writer and subscribing witnesses. The appellant denied all knowledge of the transaction, and stated that the suit was instituted at the instigation of two of his enemies, Shunker Dutt and Ujoodhea Pershad, zemindars, in whose village respondent lives. This was in no way however substantiated by his witnesses. The second principal sudder ameen decreed the case. The pleas in appeal are the same as those urged in the defence, and it is stated that the evidence of the two zemindars and their dewan, who had been named by the appellant, had not been taken. It does not however appear that the summons had ever been served on these parties, and that on the appearance of Mohun Lall, another witness summoned by appellant and stated by him to be the mokhtear of these zemindars, appellant had declined to have his deposition taken. Seeing no reason to doubt the correctness of the decision passed by the lower court, it is therefore ordered that the appeal be dismissed with costs, and the decree of the second principal sudder ameen, under date 18th September 1845, be confirmed.

THE 26TH NOVEMBER 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 78 of 1846.

Regular Appeal from a decision passed by the Additional Principal Sudder Ameen, Mahomed Ibrahim Khan, under date 5th September 1845.

Luchmenarain and others, (Defendants,) Appellants,

versus

Moost. Furmanec and Moost. Naseera, (Plaintiffs,) Respondents.

To recover the sum of Company's rupees 2,986-10-8, amount advanced on an ijareh.

The respondents sued the appellants in the additional principal sudder ameen's court, to recover the sum of Company's rupees 2,986-10-8, principal and interest under a deed dated 22d July 1832. The appellants admit the deed, but state the amount has been liquidated by the rents of the village Boeldehna which were made over to the gomashthah of the respondents. The respondents file the deed and bring witnesses to prove the balance as sued for. The appellants put in the village accounts of twelve years from 1240 to 1251 F. S., year by year, and their witnesses state that the amount sued for has been received by the gomashtha (Dost Ally) of the respondents. The additional principal sudder ameen decreed the case, considering the proofs filed by the appellants quite insufficient to substantiate their pleas, or to invalidate the evidence adduced by the respondents. He observed that the accounts filed by the appellants, which professed to be the annual ones for each successive year, appeared to be written on the same kind of paper and the ink of one colour, which led to the inference that they had been prepared all at once, and that Dost Ally the gomashtha of the respondents denied the genuineness of the accounts and his signature to them. The additional principal sudder ameen also stated his opinion of the improbability, that appellants should have paid year by year the several sums to the respondents without taking the usual acquittance from them. The chief pleas in appeal are the genuineness of the accounts filed by the appellants, and that the lower court in decreeing the case has not referred to the rents admitted by respondents to have been received by Dost Ally, their gomashtha, from the years 1240 to 1245. After a careful perusal of the accounts, I concur in opinion with the lower court in rejecting them. With regard to the other plea the appellant is in error, the respondents having sued for the amount remaining after stating the receipts from 1240 to 1245. It is therefore ordered that the appeal be dismissed with costs, and the decree of the lower court be confirmed.

ZILLAH PURNEAH.

THE 9TH NOVEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 9 of 1846.

Sudder Ameen, Izzut Ali.

Ranee Sidowtee, Appellant, (Defendant,)

versus

Sobnath Misr, Respondent, (Plaintiff.)

Scetul Chund Rae and Muneeroodeen, Vakeels for Appe

Feizoolah, Vakeel for Respondent.

THIS is an action brought by the respondent against the appellant, his co-parcener, to recover rupees 829-8, paid by the former in excess of balance due on his moiety of the joint estate, when advertised for sale by the collector. The appellant, in reply, impugning respondent's title to the share so claimed, asserts that he is only a manager, who made such payment to cover his own misappropriation of the proceeds, and that if accounts were adjusted he would be found indebted to the estate. In disproof of which, the respondent appeals to a butwarrah in progress before the collector, for separation of his share.

The sudder ameen, finding the respondent's title to be thus recognized, as also under receipts produced for payments of revenue to that extent, while the appellant during four months had failed to bring any proof in support of her allegations, decrees the amount.

In appeal the former argument is revived, and opportunity now sought to produce this.

JUDGMENT.

The reply in this case, is not only unsupported, but in its most important features contradicted, by the fact of a butwarrah being in progress at the instance of the respondent; no doubt with a view to avert such consequence in future from the *laches* of the appellant; whose appeal is now dismissed, the judgment of the sudder ameen being affirmed; and costs awarded the respondent.

THE 10TH NOVEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 10 of 1846.

Sudder Ameen, Izzut Ali.

Gopeenath, Appellant, (Plaintiff,)

versus

Shah Ullee Reza, Respondent, (Defendant.)

Mirza Ahmud, Vakeel for Appellant.

THIS is an action for recovery of possession and mesne profits, brought by the appellant, heir of the late farmer, whose lease on his demise was cancelled by the respondent, notwithstanding the appellant's readiness to make good the engagement, when it had yet six years to run; laid at rupees 558-6.

The respondent, in reply, asserting his right so to do, on the death of the original lessee.

The sudder ameer, on grounds that the title to such lease did not devolve by succession to the lessee's representative, dismisses the suit.

JUDGMENT.

Frequent as such case must be, I have not before met with it, nor do I find any such reported. I dissent from the lower court, being of opinion, that such contract is not necessarily dissolved by the death of either party: for, had the landlord here died, the kobooleat, in the hands of his heirs, would have stood good against the tenant; as its counterpart, the pottah, must therefore be held to do in the hands of the representative of the late farmer, against the landlord. In the present instance, there had been no security furnished by the tenant, whose successor might not be of the like character, to warrant the pottah's unconditional transfer. In such case, it would have been open to the landlord to demand this; for, even if originally granted, its renewal was requisite, in behalf of the party succeeding. But no such plea as this has been adduced by the respondent. I therefore remand the case, that it be decided on its merits; overruling the objection, thus raised, and admitted, in the lower court. The usual order for refund of stamp to issue.

THE 10TH NOVEMBER 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 11 of 1846.

Sudder Ameen, Izzut Ali.

Dhoorup Chowdree and others, Appellants, (Defendants,)

versus

Musst. Roopadai, Respondent, (Plaintiff.)

Seetul Chund Rae and Bama Churn, vakeels for Appellants.

Mirza Ahmud, vakeel for Respondent.

THIS suit was brought by the respondent, in order to cancel a deed of sale, wherein her late husband had transferred certain lands to the appellants, but possession of which deed, it is alleged, was surreptitiously obtained by them, before the price stipulated, rupees 500, had been received. This, it is stated, was drawn out at the house of the appellants, where the vendor that night remained, retaining the deed, until the money was paid. That in the morning, having occasion to go out, he found on his return that his bundle of papers had been opened, and the deed abstracted, on which he lodged a criminal information against the appellants for theft, who were found guilty, by the moulvee, before whom the case first came, but his judgment finally overruled, by the magistrate, and the appellants discharged. That in consequence of not getting this money, he, the vendor, was thrown into jail by his creditors, from which he only obtained release, by executing a kabaleh of the same property, in favor of Kashi Deen Dhobee: he now therefore sought to cancel the previous deed.

To this the appellants bring an unqualified denial: alleging that the money was duly paid before the deed's surrender, as proved by the subscribing witnesses; that the deed, moreover, was afterwards duly registered.

The sudder ameen finds, that on the evidence adduced in the criminal court, there exists the strongest presumption, that the appellants did not come fairly by the deed, and therefore rejects the proof as to payment; which is declared to be thereby vitiated, and annulled accordingly.

In appeal, in addition to that previously stated it is urged, that the action should have been to recover payment, not to annul the deed; which was now only sought to be done in collusion with the above Kashi Deen Dhobee.

JUDGMENT.

I concur with the sudder ameen, in considering, that the said deed was probably unfairly come by, though I cannot deem it established, with a fraudulent intent, on the part of the appellants;

the evidence, as adduced in the criminal court by the respondent, directly going to refute this. The witnesses there examined, men of great respectability, who reside in the neighbourhood of the appellant's house, stating, that on the morning spoken of, they saw the vendor coming out of the house of Kashi Deen Dhobee, also close by, who, on returning to that of the appellants', immediately exclaimed, his deed had been taken in his absence. They go on to say, that the appellants had on several occasions expressed to them their desire to settle this claim, and in token thereof actually deposited the amount with one of the deponents, but that the respondent had refused to receive it, as the purchasers would not consent to his retaining 25 beegahs for his own cultivation. It is to be here noted, that among the witnesses named to prove the circumstances of the theft by the respondent, Kashi Deen Dhobee, the party to whom he would now transfer the property, was not included, during his brief absence in whose house, we thus find, he alleged, the theft was committed; giving colour to the supposition, that, even at this stage, he might be influenced by that individual, to evade, if possible, the fulfilment of his engagement. Under any circumstances, as the appellants were eventually discharged in the criminal court, there existed no ground on which the deed was thus to be declared vitiated, or on which to support an action having such object. - I therefore reverse the decree of the lower court, and admit a nonsuit in favor of the appellant. This order to be no bar to the respondent proceeding for the recovery of any sums due, on account of such transfer. The costs are to be borne by the parties respectively.

ZILLAH RAJSHAHYE.

THE 10TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 4 of 1846.

Appeal from the decision of the Sudder Ameen.

(A) Rancee Bhoobun Moe Debbeah, and (B) Banee Kunt Ghuttuk,
(Defendants,) Appellants,

versus

Ramdas Moitter, (Plaintiff,) Respondent,

THE respondent sued the appellants for possession of 450 beegahs of land belonging to a hereditary *jote* in Dellabaree, &c., from which he had been ejected in 1249 B. S. The sudder ameen, with reference to a former decree passed by the register of this court, gave the plaintiff a decree, agreeably to the pottahs filed by him; as no opposition had been made to the claim by the appellant.

The grounds of the appeal are—First, That no notice or *ishtehar* was served on the appellants—Second, That to the pottah in the name of Kishen Inder Narayun, both his name and seal were affixed, but to that alleged to have been given by the husband of the appellant A., Juggut Narayun, no seal was affixed, and who would have put his seal had he granted the pottah—Third, That on the date of the pottah her husband was at Benares—Fourth, If a comparison was made with the signature to the pottah, and other documents signed by him, it would be at once seen that the signature was not his—Fifth, No proof in support of the validity of the pottah had been given, nor had any local enquiry been made. That with reference to the suit before the register, and the decree given by him, she had never heard of that suit. That Dee Futtehpore was sold, *after* the date of the pottah, for arrears of revenue, and had been purchased by Brejo Kishore, who sold the same to appellant. That Gungaram Tullapattur was a one anna sharer in Dee Dellabaree, &c., but had not been sued by the plaintiff, and who ought therefore to have been nonsuited. Of the service of the notice and *ishtehar*, from the returns made, there can be no doubt; the latter was filed on the 12th November 1845, and on the 27th an order was passed for the trial of the suit *ex parte*; on the 23d of January 1846, a *vakalutnamah* was filed by the appellants, and four days after, or on the 27th, the suit was decreed. Why the *vakalutnamah* was admitted, without an answer to the plaint, is not stated, and, adverting to the disposal

of the case so immediately after, I think it not sufficiently investigated. The pottahs having been admitted as genuine by the register, their being so, or not, cannot now be questioned; but the sudder ameen can take the appellants' answer, and any proof they have to offer that the respondent was *never in possession* of what he sues to recover. Should they (appellants) fail to proceed within one month from this date, the sudder ameen can affirm his former decision. The value of the stamp on which the petition of appeal is written to be returned to the appellants, and the usual order passed as regards costs.

THE 10TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 48 of 1846.

Appeal from the decision of the Moonsiff of Dhoobullhuttee.

Kishen Nath Shah, and Ramsoonder Shah, (Defendants,) Appellants,

versus

Neemye Chunder Surkar, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover from the appellants, and a third person named Kashee Nath Dass, 100 rupees, lent on bond, less 10 rupees paid, and the interest due on the balance. The bond, given it is alleged on the 5th Aughun 1247 B. S., the moonsiff held to be proved, and gave the plaintiff a decree.

The grounds of appeal are, that they (appellants) knew nothing of the plaintiff, nor had they any money dealings with him. That between appellants and Kashee Nath Dass, the other defendant, there was an old dispute, and several cases arising out of it had been decided in the foudarry court at Bograh. That in the month of Aughun 1247 B. S., Kishen Nath Shah was the gomashtah of Ramsoonder Shah, both appellants in this suit. The case not being sufficiently investigated in my opinion, it is sent back to the moonsiff of Bograh, before whom the appellants will appear *personally*, and the moonsiff will again summon and examine the witnesses to the bond, calling on them to point out the appellants as the parties that borrowed the money. The value of the stamp on which the petition of appeal is written to be returned to the appellants, and the usual order passed as to costs.

THE 12TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 63 of 1846.

Appeal from the decision of the Moonsiff of Bauleah.

Asmutoollah Jemadar, (Plaintiff,) Appellant,

versus

Koodrutoollah, (Defendant,) Respondent.

No. 64 of 1846.

Koodrutoollah aforesaid, (Defendant,) Appellant,

versus

Asmutoollah aforesaid, (Plaintiff,) Respondent.

THE plaintiff and defendant in the original suit, being both dissatisfied with the decision of the moonsiff in the original suit, have instituted these appeals. The suit was for arrears of rent alleged to be due by the defendant to the plaintiff, whose father, Pana Oollah, obtained certain lands and a garden from Shah Sujat Ali Meah, the mutwallee of a durgah, for which he was to pay at the rate of 5 Sicca rupees per annum, and which he allowed the defendant to occupy and erect a dwelling house thereon. The special deputy collector resumed these lands on the part of Government, and an uncovenanted deputy collector assessed them when in the possession of the defendant, but which assessment, on his appeal and that of other ryots, was reduced by the collector, Mr. Dirom. In the interval the special commissioner reversed the special deputy collector's orders, directing the restoration of the *wukf* or endowed lands to the mutwallee. Adverting to this, and the assessment made by the deputy collector, which the moonsiff considered to be agreeable to the purgunnah rates, he decreed the arrears, at these rates, in favor of the plaintiff, less 14 rupees proved to have been paid by the defendant to the plaintiff, and his father, Pana Oollah, deceased.

The plaintiff appeals against this decision as he had served a notice on the defendant, his under tenant, for an increment of rent, and claimed the arrears at this rate. He also protested against the admissibility of the set off for 9 rupees, as per receipt of his father, as it had not been mentioned in the defendant's answer, but was allowed by the moonsiff.

The defendant, in his grounds of appeal, repeats his former plea of the purgunnah rates according to which he was liable, or rather that he was liable to the reduced assessment of the land made by the collector. He also claimed as a set off the payment of rupees 20-8, viz.

To the plaintiff,	5	0	0
To the plaintiff's father as per receipt,	9	0	0
To Sujat Ali (the mutwallee) at the poonea,	1	0	0
To ditto on account of rent,	5	0	0
To plaintiff on account of a <i>jote</i> called Jhameer Sheikh's <i>jote</i> ,	0	8	0
<hr/>			
Total, 20	8	0	

These three last payments cannot be allowed under any circumstances, as the defendant was the plaintiff's under tenant, and therefore could not pay the rent direct to the mutwallee, or if he did, was not exempted from the demands of the plaintiff. What the purgunnah rates have to do with this case I cannot see. The rent is claimed for lakheraj, or rent free land, situated in the middle of the town of Bauleah, and therefore of course more valuable and liable to an enhanced rent. The defendant obtained no *pottah*, and gave no *kuboolut*, nor does he hold any regular *dakhillahs* or acknowledgments of rent paid—nothing but the receipt of Pana Oollah for 9 rupees, and 5 rupees he advanced for his *fatea*, or wake, to be credited on account of rent. It is absurd to suppose that the plaintiff either could, or would, let him remain in possession of the land paying a less rent than what he (plaintiff) paid the mutwallee, who had sued him and got a decree for arrears of rent on the 29th July 1844. In this decree the rent the plaintiff was made liable for, was as follows:

From 1245 B. S., to 16th Assin 1249, at 5 Sicca rupees, Sicca rupees 22-8, or Company's rupees	24	0	0
From 17th Assin 1249 B. S., to Cheyt 1250 B. S., at Company's rupees 5-12, or according to a new pottah,	8	10	0
<hr/>			
Total,	32	10	0

Now these rates must, I consider, rule the plaintiff's claim on the defendant, till the 1st Jeyt of 1250 B. S., when he served a notice on the defendant that he was to pay at the rate of 6 rupees and 16 *gundas*, Sicca, or Company's rupees 6-7-3.

The defendant is therefore liable as follows:

From 1245 B. S., to 16th Assin 1249 B. S., at 5 rupees Sicca, or Company's rupees 5-5,	24	0	0
From 17th Assin 1249 B. S., to the end of Bysack 1250, at Company's rupees 5-12,	3	5	8
From 1st Jeyt 1250 B. S., to Phagoon 1251 B. S., at Company's rupees 6-7-3,	12	6	0
<hr/>			
Total,	39	11	8
Deduct paid,	14	0	0
<hr/>			
Balance Company's rupees	25	11	8

The above sum or balance I decree in favor of the appellant in case No. 63, in amendment of the moonsiff's decision, with interest from the date of the institution of the suit and all costs of both courts.

The appeal of the defendant in case No. 64, with reference to the above, is dismissed with costs.

THE 18TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 62 of 1846.

Appeal from the decision of the Moonsiff of Bauleah.

Asmutoolah Jemadar, (Plaintiff,) Appellant,

versus

Moonshey Koodrutoolah and Shah Soojat Ali, (Defendants,)

Respondents.

THE parties in this suit are the same as in the other two cases decided on the 12th instant.

In this suit the appellant sues to recover possession of a hollow or tank, situate, he alleges, within the boundaries of a pottah he holds from the mutwallee (Soojat Ali) of the durgah. The moonsiff dismissed the suit, holding the plaintiff had never been in possession of the hollow or tank. The grounds of appeal are that the moonsiff gave the mutwallee a decree for rent for this very land and hollow. The mohafez dufter was directed to produce the former nuthee, and this day it has been examined, and it would appear a decree was given, *ex parte*, in favor of the mutwallee for rupees 10-9-2, on a *kuboolcut* filed by the plaintiff in which the boundaries of the land were set forth. Under these circumstances the case is sent back to the moonsiff, who will proceed to the spot (which is close by) and ascertain if the hollow or tank now claimed by the appellant is situate and within the boundaries set forth in the *kuboolcut*: should it be so, the appellant, as being liable for the rent, is entitled to possession. The value of the stamp on which the petition of appeal was written to be returned to the appellant, and the usual order passed as regards costs.

THE 20TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 4 of 1846.

Appeal from the decision of the Principal Sudder Ameen.

Mr. J. C. Abbott, (Plaintiff,) Appellant,

versus

Kallypershad Muzzoomdar, Bhowanny Debea and her son Bhowannypershad Muzzoomdar, (Defendants,) Respondents.

THIS suit was instituted by the appellant to have cancelled, or set aside by a decree of court, a deed of gift from the respondent Kallypershad to his wife Bhowanny Debea and her

son, on the ground that such transaction was fraudulent, and therefore null and void. The appellant took in farm certain lands from the Court of Wards and underlet a part, or farmed them to other parties, the respondent Kallypershad becoming security for the under farmers or *dur-ijardars* and pledging his property, stated to be Massendia *degur*, or Massendia *et cetera*, or "so forth," to the appellant. The *dur-ijardars* having fallen into arrears, the appellant sued them and the security, and got a decree for the balance due—he then sued out execution and got attached and advertized for sale the property which Kallypershad by deed of gift had assigned to Bhowanny Debea and her son. Bhowanny Debea put in her claim to the property, but the principal sudder ameen, holding the assignment to be fraudulent, ordered the sale of the property, his order being affirmed in appeal by the judge. On a further appeal to the Sudder Dewanny Adawlut, the Court (Mr. J. F. M. Reid, Judge) reversed the orders of the lower courts, and directed that if the sale had taken place it was to be cancelled. The present suit was then instituted by the appellant, on the 13th May 1844, before the principal sudder ameen, who decided that the assignment under the deed of gift was not fraudulent, and therefore dismissed the suit. Against this decision the appellant appeals setting forth in his grounds of appeal, among other reasons for so doing, that both the late judge,* and the principal sudder ameen, had before decided that the deed of gift was a fraudulent assignment of property pledged before by Kallypershad as surety for the under farmers. That such an assignment by a Hindoo to his wife was not legal or valid. That a Hindoo's wife was only entitled to her *streedhun*. That Construction No. 588, cited by the principal sudder ameen as one of the grounds for dismissing the suit, and admitting the claim of Bhowanny Debea, was irrelevant. The appellant also adverted to the case noted in the margin* as one in point, and under which the deed of gift should have been declared null and void.

*Ramruttun Roy and others,
Appellants,
versus
Sumbon Chunder Roy and
others, Respondents.
Sudder Dewany Adawlut
Reports,
Vol. VII. p. 32.

The appeal was admitted on the 17th July last to examine the original security bond filed in another suit. The *nuthee* having been produced, a copy of the bond and of an *ikrar* or agreement given by the under farmers to the appellant, to which Kallypershad was also a subscribing party and covenanted that he would be answerable for all balances, have been read and examined. On this *ikrar* the *vakeel* for the appellant, in his verbal pleadings before the court, lays great stress. Of the liability of Kallypershad there can be no doubt whatever, but the point for the decision of the court is whether the deed of gift, dated the 29th Assin 1240 B. S., and which Kallypershad attended in person to have registered, and which was registered on the 10th Assin 1241 B. S., corresponding with the 25th September 1834, was a fraudulent

transaction, and also if the property set forth in detail in that deed, consisting of certain portions of *mouzuhs* Duneabaree, Shabardec, Sharora, another *kismut* called Sharora, and chuck Gunay Gatcha, in purgunnah Sonabazoo, was definitely pledged as security for the farmers by the respondent Kallypershad to the appellant.

The deed of gift bears a *prior* date to the security bond: the registry of the former was however *subsequent* to the date of the security bond. The principal sudder ameen in his decision records that after *mature consideration* he does not think the assignment fraudulent. The Sudder Court in their order seem to lay great stress on the fact of its having been registered before the appellant instituted any suit in the court, and to the further fact of the mutation of Bhowanny Debea's name in the collector's office before a decree was passed in favor of the appellant. None of the villages, or mouzahs, set forth in the deed of gift are mentioned in the security bond given to the appellant: as before stated, in the recital of the property pledged, there is merely Massendhia *degur*. To adopt the words of the Sudder Court in a judgment recorded at page 428 of the printed Decisions for 1845, the simple question is whether such general indeterminate, and vague expressions, as Massendhia *degur*, or Massendhea and "so forth," are to prevail over what is clear, definite, and indubitable, *i. e.*, the assignment of property under a deed of gift by a Hindoo to his wife, and who having demised makes it a reversiory interest the court have to deal with. Of the legality of such an assignment by a Hindoo to his wife there can be no doubt, more particularly when in the deed the interests of a son, born to the donor, by the wife, are distinctly mentioned, and since there was no definite assignment or pignoration of the property now claimed, as assets liable to sale in the security bond, taken by the appellant from the respondent, Kallypershad, the decision of the principal sudder ameen cannot, I think, be disturbed. The appeal is therefore dismissed, and as no notice has been served on the respondent, it is not necessary to pass any order as regards costs, but the appellant will have authenticated copies on stamp paper made of the security bond and *ikrar*, and which will be filed with the record in this case.

THE 27TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 8 of 1846.

Appeal from the decision of the Principal Suddler Ameen.

Messrs. John and Robert Watson, (Plaintiffs,) Appellants,

versus

(A) Personnonath Roy and (B) Sunkuree Dassea, (Defendants,) Respondents.

THE appellants sued the respondents to recover 1,500 rupees, with interest equal to the amount of the principal, lent on bond by the

late Mr. Alfred Betts of Shikarpore factory to the respondent B on the 9th July 1828 A. D., corresponding with the 27th Assar 1235 B. S., to enable her to perform the funeral obsequies or *shraud* of her deceased husband Prannath Roy, and who, when called upon by the collector, admitted, in a representation made to that officer, on the 26th Kartick 1242 B. S., that she had borrowed the money of the aforesaid Alfred Betts for the purpose stated above, which representation was recorded and filed by the then collector on the 15th September 1835.

The principal sudder ameen, with reference to Construction 813, and the rule of limitation, held the claim to be barred, and dismissed the suit with costs on the 27th February 1846.

The appellants being dissatisfied with this decision have brought the present appeal, again claiming the sum, with interest, advanced to the respondent B., and urging in their grounds of appeal that the delay was occasioned by the other respondent A. being before a minor under the Court of Wards, and B. promising to pay when he came of age, and therefore they did not sue before, and further, that the collector had, on the admission made by A.'s mother of the debt, recommended to the commissioner of revenue that it should be paid out of the assets of the minor's, or respondent A.'s, estate in the hands of the Court of Wards.

The appeal was admitted on the 18th July last, to examine the answer made by the commissioner to the collector, not filed on the record. The present collector has, on a requisition of this court, sent up the original nuthee; and from a perusal of the proceedings therein, dated 19th November 1835, of the commissioner, of the deputy collector's (Mr. Dirom) of the 11th December 1835, and the commissioner's final roobekaree of the 18th idem, it would appear that the claim of the appellants was rejected, as there was no document to shew the sum borrowed had been expended on the *shraud* of the deceased, and for which purpose it was alleged it had been lent. The suit was filed on the 2d January 1845, more than twelve years after the date of the bond, corresponding with the 9th July 1828, and which became due in the month of Poos 1235 B. S., or in January 1829. There can be no doubt the bond was given by the respondent, Sunkuree Dassea, to Mr. Alfred Betts, and the endorsement over, or assignment of the same to Messrs. Watson and Co., the purchasers of the Shikarpore factory, or concern, appears all to have been regular, and therefore fully entitling them to sue, but they have themselves alone to blame for the delay in suing—*laches* which bar their claim under the bond. The admission of B., who gave the bond, before the collector, cannot, and does not alter the case, for if a summary application to a court of justice cannot be considered as a "preferring of the claim," (*vide* Construction 813,) how can an application to the collector be so held? And after referring to all the precedents declaring lapse of

time not to bar the suit, for special reasons, at pages 32 and 93 of the Sudder Court's Decisions for 1845, and at pages 105 and 107 for 1846, I cannot find one that will meet the appellant's case. Seeing therefore no reason for disturbing the principal sudder ameen's decision, the appeal is dismissed with costs, but the respondents will file copies of the proceedings of the revenue commissioner and deputy collector of Rajshahye to file with the record in this case.

THE 28TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 3 of 1846.

Appeal from the decision of the Principal Sudder Ameen.

Joysunker Sandial, (Defendant,) Appellant,

versus

Haroo Roy and five others, (Plaintiffs,) Respondents.

THE respondents sued the appellant for possession of 257 *beegahs*, 2 *cottahs* and 10 *dools* of land, being part of 300 *beegahs* granted, it is alleged, to them and a person by name Ishur Dyal Chobey by Koor Ram Chunder, situated and lying within certain specified boundaries in *mouzah* Kidderpore at a *jumma* of 51 rupees, under a pottah dated the 2d Mang 1246 B. S. The principal sudder ameen gave the plaintiffs a decree for possession of the land less the share of the aforesaid Chobey, together with mesne profits for the period of dispossession, but from what date is not specified.

Against this decision the appellant, who holds a *durputnee* under the Koor, appeals, setting forth in his grounds of appeal that there is no proof of the respondents having been in possession of the land they now sue for. That they could not sue deducting the share of Ishur Dyal Chobey. That within the boundaries stated in the pottah there were from 800 to 900 *beegahs* of land occupied by his ryots, against whom he had obtained decrees for rent,—and notwithstanding, the principal sudder ameen had given respondents a decree, without ordering any local investigation to be made. That when the case was pending in the foudarry no mention had been made of the pottah dated in 1246 B. S. That respondents not being parties to the summary suit (decided under Act IV. of 1840) could not sue for its reversal. That it was a suit for disputed possession between him and Messrs. Watson and Co., and the magistrate had decided that he (appellant) was in possession, and this had been affirmed in appeal by the session judge. That Messrs. Watson and Co. held a mortgage of the whole of the zemindarees of Koor Ram Chunder, and had, in collusion with the respondents, brought this suit, producing a pottah which was antedated in support of their claim. The appeal was admitted on the 17th July last with refer-

ence to the Act IV. decision, which was called for and examined, together with other decisions relating to rent, on the 18th of November, and on this date. It would appear from the admissions of the *vakeels* of both parties that the *putnee* held by Koor Ram Chunder, had been declared by the Sudder Court null and void. Under such circumstances the claim of the respondents cannot be sustained. Independent of this, I am not satisfied that the respondents were ever in possession, and there is no proof whatever that they were dispossessed by the appellant, *ergo* no suit could lay against him alone. The principal sudder ameen's decision therefore must be reversed; and the appeal decreed with all costs payable by the respondents in both courts.

THE 28TH NOVEMBER 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 10 of 1846.

Appeals from the decision of the Principal Sudder Ameen.

(A) Jungoo Surkar and (B) Omed Surkar, (Defendants,) Appellants,

versus

(C) Kallykant Lahoree, (Plaintiff,) Respondent.

No. 11 of 1846.

(C) Kallykant Lahoree, aforesaid, (Plaintiff,) Appellant,

versus

(D) Fukeer Uddeen Chowdhree, (Defendant,) Respondent.*

FOR a proper understanding of the subject of the suit out of which these appeals arose, it will be necessary to refer to a former suit decided also in appeal in this court. Kumlakant Chowdhree and others, former proprietors of 13 annas 14 gundahs' share of mouzah Dhoorul Mullick-pat, pergunnah Sonabazoo, sued Saraj-el-nessa for possession of certain lands situated in the same mouzah, and which she claimed as her *putnee*. The husband of Saraj-el-nessa, Roheem-uddeen Chowdhree, who again was the father of Fukeer Uddeen, D., held an *ijarah* from the ancestors of the plaintiffs in that suit, and which *ijarah* or lease extended to 1230 B. S. *Pendente lite*, the proprietors failing to pay the Government revenue, the estate was sold for the recovery of the arrears, and was purchased at auction by Kallykant Lahoree, C., who applied and was allowed to carry on the suit, and which was eventually decided in his favor by the principal sudder ameen, *i. e.* the claim to hold the land as *putnee* rejected. From this decision passed on the 14th April 1836 an appeal was preferred, and the former judge (Mr Barlow) in appeal amended the principal sudder ameen's decision as regarded the order

for mesne profits, directing that Ishurchunder and others of the proprietors who had admitted Saraj-el-nessa's putnee were to pay the mesne profits for their share, and the remainder was to be paid by Fukeer Uddeen, D., *who was in possession*: what was due to the former proprietors on this account (or for wassilat) to be paid to them to the day of the sale, and subsequent to that date to the auction purchaser or Kallykant Lahoree, C.

After this the auction purchaser applied through the collector to be put in possession of his auction purchase by the civil court, when A. and B. set up a claim to the land as their hereditary or *moorussee jote*; this claim however the judge rejected, and directed possession to be given to C. An appeal was preferred to the Sudder Court, who (Mr. J. F. M. Reid, Judge) reversed the judge's order on the 8th April 1840, declaring the right of A. and B. to occupy the land claimed by them as a *moorussee jote*, could only be contested in a regular suit. In the interval, or subsequent to the above order, disputes had arisen in the mofussil, and the case was brought under Act IV. of 1840, and the joint magistrate of Pubnah, with advertence to the Sudder Court's order, alluded to above, decreed possession to A. and B. on the 11th April 1843. To reverse this summary order and to have the *moorussee pottah* under which A. and B. claimed possession, cancelled, the present suit was instituted by C. against them and D.; and the principal sudder ameen, adverting to the fact of Rajah Ramkishen having assigned all his property before the date of the pottah to his son Rajah Bishonath, held that he had no authority to grant the pottah, that the pottah itself he suspected was fabricated, and that being dated in 1201 B. S., it was subsequent to the decennial settlement, and therefore, in consequence of the sale for arrears, could not be upheld: he also recorded it was not proved that the defendants A. and B. had been in possession: he therefore gave C. a decree for possession as auction purchaser, and awarded *mesne* profits to be paid by A. and B., exempting D. *in toto*. Against this decision both parties have appealed, and, after a perusal of the Act IV. decision, the appeal was admitted on the 18th July last, the original proceedings in the Act IV. case sent for and the principal sudder ameen called upon to explain why Fukeer Uddeen Chowdhree had been exempted from all liability on account of mesne profits, and on whom a notice was ordered to be issued. The principal sudder ameen's reply to the call made to him amounts to this: that he only thought, or inferred, that A. and B. had been instigated by Fukeer Uddeen Chowdhree to set up the claim they did, and that there was no proof of the latter being in possession of the land in dispute. For the reasons given by the principal sudder ameen, for rejecting the *moorussee pottah* of A. and B., I concur with him entirely; but, adverting to the original complaint in the Act IV. case, in which D. was accused of unlaw-

fully assembling persons to retain possession of the land, setting up A. and B. to claim the same; to the fact of a notice having been served upon him in that case, through his agent, of which he took no notice whatever, and filed no answer; to the further fact of his not appearing to defend the suit in the principal sudder ameen's court, when made a party; to his having before, on the putnee alleged to have been given to his mother, Saraj-el-nessa, kept C. out of possession; to his having been in that case, as *being in possession*, made liable to the payment of mesne profits by the late judge of this court; and to the opinion given by the principal sudder ameen that A. and B. were not proved to have been in possession, it is a fair assumption that D. was all along in possession, and unwarrantably withheld possession from C., the purchaser of the estate at a revenue sale, and though A. and B. were maintained in possession by the joint magistrate, they were merely D's creatures, or men of straw, urged on by him to contest the possession of C., and left to stand the chance or risk of being prosecuted for forgery, or filing a forged document. Under all these circumstances, I see no reason for exempting D. from the payment of mesne profits for wrongful possession, and therefore, in amendment of the principal sudder ameen's decision, decree that all the three defendants pay the mesne profits at the rate claimed, viz. rupees 375 per annum, less 10 per cent. on account of costs of collection, and which I do not consider excessive with reference to the quantity of land, stated to be 230 beegahs in the pottah, and which A. and B's vakéel admits not to have been less. A. and B. to pay all the costs of their appeal (No. 10) and D. the costs of C., appellant in case No. 11. C., however, to file a copy of the plaint in the Act IV. case, and of the service of the notice in that case with the record of his appeal.

ZILLAH RUNGPORE.

THE 25TH NOVEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 161 of 1845.

*Appeal from the decision of Khoda Bux, Moonsiff of Bhotmaree,
dated 22nd August 1845.*

Ruttunnesser Surma, (Plaintiff,) Appellant,

versus

Buddun Chunder Doss, (Defendant,) Respondent.

THIS suit is instituted by the plaintiff, a lakherajdar, for the recovery from the defendant, a tenant, an enhanced rent for the year 1252 B. S., on a jote held by him to the extent of eight bissees of land, under the provisions of Regulation V. of 1812, to establish his right to which he has no documentary evidence, only oral testimony.

The defendant denies the plaintiff's claim, asserting the jote in his possession not to be subject to enhanced rent, but to be held under a mokurrery pottah, dated the 13th Jeyt 1174 B. S., with an annual fixed rent of Sicca rupees thirty-five, granted by Romanath Surma and Kistomungul Surma, lakherajdars, the former of whom obtained a rent-free sunnud in 1161 B. S., from Ramrooder Chowdry, zumindar, which was registered in the collectorate agreeably to Regulation XIX. of 1793, and the validity of which was upheld by the special deputy collector of Rungpore in his roobukaree, dated the 21st July 1843. The defendant, also, with a view of establishing his uniform possession of the tenure since he obtained it, produces a large number of receipts for rent paid to the successive lakherajdars from the year 1175 to 1251 B. S.

The moonsiff dismisses the suit, the oral testimony adduced on the part of the plaintiff not proving the defendant's tenure to be liable to an increased assessment.

From this decision the present appeal is preferred, on the ground that the appellant being only a purchaser of the rent-free estate in which the disputed jote is situated, without holding any papers to show the liability of the jote to temporary settlement, it was the duty of the moonsiff to have required from the late rent-free proprietor the production of the jumma wasil baukee and any other accounts

relative to the jote, or to have required him, appellant, to have procured and filed them, with other unimportant objections.

On an examination of the proceedings, seeing no reason for impugning the correctness of the moonsiff's decision, it is ordered that the appeal be rejected, and the judgment of the lower court be confirmed.

THE 26TH NOVEMBER 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 3 of 1845.

Appeal from the decision of Mr. Thomas, Acting Sudder Ameen of Rungpore, dated 9th January 1845.

Hurlochun Chukerbutty and others, (Defendants,) Appellants,

versus

Mr. Charles Bishop, (Plaintiff,) Respondent.

THE plaintiff, as an under-farmer, in virtue of a pottah obtained in the fictitious name of a servant, from two joint farmers dated the 8th Falgoon 1246 B. S., for a period of six years, sues the defendants as ryotts jointly possessing two jotes, situated in the village of Nataram, pergunnah Batasum, for an increased rent from rupees 157 to rupees 631-14-12, founded on measurement and revision of assessment, from the year 1250 B. S., under the provisions of Regulation V. of 1812, having served them with the prescribed notice and required them to attend his cutcherry and enter into a settlement with him by the interchange of pottah and cubooleut, to which having paid no attention the present action is instituted.

The defendants, in their answer, allege that having, already, that is, since 1244 B. S., (two years before the plaintiff's lease,) been admitted to a settlement with the proprietor of the estate, for the lands in question, for a period of nine (9) years, or, until the end of 1252 B. S., on the total yearly jumma of the two jotes of 157 rupees, in proof of which they hold two umulnamas, one for each jote, both dated the 25th Bysakh 1244 B. S., and signed by Shamgobind Bose, naib peshkar of the zumeendar, neither the farmer nor under farmer can interfere with them during the period of their lease, and thus refute the plaintiff's claim.

The sudder ameen decrees the suit for rupees 614-4-12, because the defendants had failed to produce the farmer's pottah as granted by the zumeendar which had been called for, and because he discredits the genuineness of the umulnamas of the defendants owing to their not having made mention of them in their first answer.

The defendants appeal from this decision on the grounds that the sudder ameen has erred in his reason for the rejection of their umulnamas, in as much that they did make mention of them in their answer and reply to the suit, and that they as ryotts were unable to produce the farmer's pottah.

It appears to me that the enquiry of the sudder ameen has been imperfect. The reason alleged for discrediting the umulnamas, besides not being entirely correct, one of the defendants having referred to them in his answer, was not sufficient for their rejection. As these documents had been produced in court, proof should have been required as to their validity, whence the appeal is decreed, and the order of the sudder ameen reversed, to whom the case will be returned for re-trial with reference to the above observation, after which he will decide the case as he may judge proper.

ZILLAH SARUN.

THE 17TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 36 of 1846.

*An Appeal from a decision passed by Mr. C. McDonald, Moonsiff
of Pursah, dated 10th February 1846.*

Anundee Rai, (Plaintiff,) Appellant,

versus

Goodree Sing and Hurnath Sing, (Defendants,) Respondents.

CLAIM, for replevin of distress for rent.

The plaintiff set forth that he, and Purshon Rai, and others, were the "mokurraridars" of the village Dulloopoor Doodia, in pergunnah Kusmer. That notwithstanding defendants had attached certain crops for the liquidation of 22 rupees, 1 anna, on account of rent of five beegahs of land situated near his homestead as being due from Asar 1251 to Jeyt 1252; that he himself was the proprietor holding under a mokurraree tenure, and accordingly sues for replevin of distress.

Defendants stated that they were in possession of the village as "peshgidars;" that Ramzan Ali, and others from whom they hold a lease, were the proprietors under a decree of court; and that plaintiff had paid rent for the land in question up to the period claimed.

The moonsiff of Pursah dismissed the plaintiff's claim on the ground that in a former suit brought by the plaintiff against Ramzan Ali, and others, (the maliks,) to establish his mokurraree tenure, the court of appeal, by a decree dated 28th June 1833, decided that no such tenure existed; and from local enquiry made it was further proved, that plaintiff was in possession of more land than for which rent was claimed. The moonsiff of Pursah accordingly upheld the attachment, and dismissed the suit with costs.

It was held in appeal that the ground urged by plaintiff on this suit as a plea for refusing to pay rent for the land connected with his dwelling house, has been already rejected by a decree of court. This suit therefore, involving the same cause of action, was properly dismissed by the lower court.

ORDERED,

That the appeal of appellant be dismissed with costs, and the decision of the moonsiff of Pursah be affirmed.

THE 17TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 37 of 1846.

An Appeal from a decision passed by Syud Asud Ali, the Moonsiff of Chuprah, dated 6th February 1846.

Dhujjoo Pandey, Adnath Pandey, and Soorut Pandey, (Plaintiffs,) Appellants,

versus

Munsha Pandey, Ajaijeet Pandey, Barosa Pandey, and others, (Defendants,) Respondents.

CLAIM, to recover priest's fees amounting to rupees 12-10.

Plaintiff represented that they were the appointed "prohits" of Peemberpoor, pergunnah Baal, and as such were entitled to the perquisites offered to the priest, amounting to the above sum which defendants on the death of Goorchund Sahoo's mother had forcibly carried off.

The defendants urged that the house of the deceased was situated in the 14 annas share of the village of which they were the "prohits," and that the remaining 2 annas belonged to Munsha and Ajaijeet Pandey, the heirs of Summode Pandey, against whom alone plaintiff had obtained a decree of court, and further the plaintiff had relinquished even that share in exchange for the tolah Nournugger.

The moonsiff of Chuprah nonsuited the claim of plaintiffs for splitting the cause of action, being of opinion that he should have sued for his right to these religious fees in the whole village as before decreed, and that moreover, according to defendants' showing, plaintiffs' statement appeared contrary to the facts of the case.

It was held in appeal that the investigation of the moonsiff in this case appeared incomplete. Appellants in proof of their claim had filed a decree of court dated 27th February 1810, whereby their ancestor, Doorbijoy Pandey, had been recognized in general terms as the village "prohit," and the office was known to be hereditary. The objections taken by respondents that appellants' jurisdiction was restricted to one-eighth of the village, and that the remainder (including the house of the deceased) belonged to them, and further that appellants' share had been subsequently exchanged by mutual agreement for another tolah were pleas, in support of which the court should have required some proof. In the absence of proof in regard to the extent of plaintiffs' share and subsequent exchange of land as urged by respondents, it is not clear how the moonsiff arrived at the conclusion that the claim did not embrace the whole cause of action.

ORDERED,

That the case be sent back for retrial, and the value of the stamp paper on which the appeal is engrossed be returned. The costs of suit to be adjusted hereafter.

THE 21ST NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 38 of 1846.

*An Appeal from a decision passed by Pundit Dataram, late Moonsiff
of Sewan, dated 7th February 1846.*

Ramnoograh Sing, Lal Bahadur Sing, Roochun Rai, and Persnath
Oja, (Defendants,) Appellants,

versus

Bhekarnain Sing, (Plaintiff,) Respondent.

FOR reversal of summary award for rent passed by the collector of Sarun under date 3rd March 1845.

It appeared that during the period for which rent was claimed, mouzah Tedooa, pergunnah Baal, was under attachment of the collector of Sarun for a decree of court by order of the judge of Beerbhoom, and that appellants were the farmers in possession upon a lease granted by the collector, and that property belonging to plaintiff was distrained by the defendants for rupees 149-15, rent in cash and kind on account of 26 beegahs, 12 cottahs, alleged to have been cultivated by respondent in 1251 Fussily. This suit is accordingly brought by respondent for replevin of distress for rent, denying having cultivated any land whatever in the said village during the year in question.

The moonsiff deputed an ameen to make local enquiry into the point at issue, *quoad* the cultivation by plaintiff, and the ameen reported that the evidence taken on the spot satisfactorily proved that he had *not* cultivated any land in the said village during that year. A decree was accordingly passed by the lower court, reversing the summary award passed by the collector.

It was held in appeal that the local enquiry made by the ameen on the spot from several uninterested witnesses ~~must~~ be regarded as more credible evidence than the bare assertions of the farmers, putwarry, and gomashtah, who are the village servants of appellants. Moreover the respondent was not recorded as a cultivator in the putwarry accounts for the preceding year, and it is not probable that respondent would relinquish his lands by denying altogether his connection with the village, to save his rent for one year. For the above reasons.

IT IS ORDERED,

That the appeal of appellants be dismissed with costs, and the decision of the lower court be affirmed.

THE 21ST NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 39 of 1846.

An Appeal from a decision passed by Mr. C. McDonald, the Moonsiff of Pursah, dated 9th February 1846.

Meer Warris Ally, (Defendent,) Appellant,

versus

Koonjbeharry Rai, (Plaintiff,) Respondent.

CLAIM, Company's rupees 291-11-6, principal and interest, on account of a bond dated 21st Sawun 1251 Fussily.

The disputed bond was for Company's rupees 285, at 1 per cent. per mensem, payable in one month, and was written by Chukouree Lol on behalf of Meer Warris Ally, and bore the attesting signatures of Bishonat and Benarasee Raot. The above scribe and attesting witnesses swore to the bond having been duly executed and the money paid in their presence, and four other witnesses testified to the debt having been incurred, and subsequent demand having been made. The moonsiff of Pursah accordingly passed a decree in favor of plaintiff, in dissatisfaction of which the defendant appeals.

Appellant denies the claim *in toto*, urging that the bond is not registered, and is engrossed on paper purchased for another object, and that he has succeeded in proving an *alibi*.

It was held in appeal that the execution of the bond and its delivery as well as the consideration given is well substantiated by the scribe and two attesting witnesses. The denial therefore of appellant is insufficient, and the objections taken are irrelevant:—registration is not imperative, and there is no rule prohibiting the execution of a bond on paper originally purchased for another purpose, provided the value of the stamp be sufficient; and with regard to the evidence adduced by appellant in support of a negative, such oral testimony cannot supersede the direct evidence brought forward by respondents in support of a fact.

ORDERED,

That the appeal be dismissed with costs, and the decision of the moonsiff of Pursah be affirmed.

THE 21ST NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 40 of 1846.

An Appeal from a decision passed by Mr. C. McDonald, the Moonsiff of Pursah, dated 7th February 1846.

Golab Rai and Dookdaik Rai, (Defendants,) Appellants,

versus

Bebce Ameena, wife, and Russool Bandey, daughter of Nijabut Khan, deceased, (Plaintiff,) Respondent.

CLAIM, for possession of 4 beegahs of land in Siktibikum, meha Sunnoulee, pergunnah Goah, with mesne profits, and interest from 1247 to middle of 1252 Fussily, total Company's rupees 149-5-6.

Plaintiffs in this case state that they are the heirs and representatives of Nijabut Khan, deceased, who, for an advance of Company's rupees 1625, hold from the proprietors, Nabidad Khan and Alidad Khan, a lease of 4 annas in the above-named and two other villages. That as "peshgidars" they let 4 beegahs of land in Siktibikum to Daiem Khan, and that defendants are the co-sharers of the said Daiem Khan, deceased, and who continue in possession and without paying rent, alleging it to be a "mokurralee" tenure. Plaintiffs therefore sue for possession with "wasilat" or mesne profits.

Defendants deny having been the co-sharers with the late Daiem Khan, and urge that the 4 beegahs claimed, is situated in their "mokurralee" tenure, which is not liable to assessment.

An ameen was deputed to make local enquiry, and found that the 4 beegahs in question appertained to the land assigned to plaintiffs in consideration of their lease of 4 annas on an advance, and that the lands claimed by defendants as their "mokurralee" were separate; the moonsiff accordingly passed a decree in favor of plaintiff for possession with wasilat at 2-8 per beegah.

Defendants in dissatisfaction appeal against this decision, but I find no sufficient reason to interfere. The appellants rest their claim upon an alleged 'mokurralee' lease, but no such lease is forthcoming, and although some of the receipts and acquittances filed, allude to such a tenure, such receipts alone are insufficient proof of the title to hold at a quit rent: moreover it is found by local investigation that the said 4 beegahs is not situated in the lands so claimed; and the village putwarry and others have deposed to the assessment at 2-8 per beegah being the average rate for lands in the vicinity of a similar description.

IT IS THEREFORE ORDERED,

That the appeal be dismissed with costs, and the decision of the moonsiff of Pursah be affirmed.

THE 21ST NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 41 of 1846.

A Regular Appeal from a decision passed by Mr. C. McDonald, the Moonsiff of Pursah, dated 7th February 1846.

Nursingnarain, (Plaintiff,) Appellant,

versus

Ram Bhunjun Sing, (Defendant,) Respondent.

CLAIM, Company's rupees 274-3, principal and interest, on account balance of rent on account of 1249-51 Fussily, for the cultivation of 25 beegahs of land in Bazeedpoor, pergunnah Goah, at Company's rupees 73 per annum.

This was a claim founded upon the village putwary's "juma-wasil-bakee" account, which showed that no rent had been paid according to defendant's counterpart lease for three years, amounting at 73 per annum to Company's rupees 219, principal, and Company's rupees 55-3, interest.

Defendant pleaded that he had cultivated to the end of 1248 Fussily only, after which he had relinquished his fields, in consequence of defendant (who was the "pesligidar") having demanded exorbitant increase, denying the execution of any counterpart lease, and further that this suit had been instituted from enmity in consequence of a dispute regarding certain lands held in joint tenancy, the rent of which defendant refused to liquidate a part.

The moonsiff of Pursah dismissed the claim, being of opinion that the "kabuleut" was not well proved, and because numerous witnesses adduced by defendant had corroborated defendant's plea of relinquishment in consequence of exaction.

It was held in appeal that the counterpart which defendant denies having executed seems to have been written, signed, and attested by the same person, and the evidence of plaintiff's witnesses is too general to be satisfactory: they do not state for instance what crops were cultivated by defendant: on the other hand, it is improbable, especially as the parties were at variance in regard to certain lands held by them in joint tenancy, that plaintiff would have allowed defendant to continue a defaulter for three years in succession, without taking summary measures for enforcing payment of his rent. I therefore dismiss this appeal with costs, and confirm the decision of the court below.

THE 26TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 43 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 10th February 1846.

Koonjbehari Panday, (Plaintiff,) Appellant,

versus

Tika Panday, Sheotohul Panday, Juggomohun Panday, Dena Panday, and Badul Panday, (Defendants,) Respondents.

CLAIM for possession of 13 "doors" of land in the village Bareja, pergunnah Baal, value Co.'s Rs. 13.

The land in dispute formed an enclosure surrounded by the houses of plaintiff, Tika Panday, Doobree, Hulkhooree, Ramnaraïen, and Badal. In 1844, when the question of right was contested, it was referred by the parties to arbitration, and decided in plaintiff's favor on the 25th Jayet 1251, by *one* of two arbitrators so appointed, but in Agun following, when plaintiff proposed to build thereupon defendant, Tika Panday, and his son Sheotohul, objected, and the said Sheotohul instituted a regular suit, on the 30th December 1844, *not against plaintiff*, but surreptitiously against other defendants who acknowledged the justice of the claim, and procured an *ex parte* decision in the moonsiff's court *on the following day*.

Plaintiff rests his claim on the arbitration award. Defendants urge that the award was never presented for execution, and he should have appealed against the decree of court passed in their favor.

The moonsiff of Chuprah passed a decree in favor of plaintiff for possession, but without the power to build; observing that the arbitration award holds good until reversed by a decree of the civil court, and that defendants' decree surreptitiously obtained is good for nothing. Plaintiff in appeal objects to the reservation imposed in regard to building.

It was held in appeal that this decision of the lower court is manifestly wrong. The award of arbitration not having been presented for execution within a period of six months, should have been rejected under Clause 2, Section 2, Regulation VI. of 1813, and the court should have proceeded to try the case upon its merits; and as regards the defendants' *ex parte* decree, it should not have been set aside upon the assumption that it was collusively obtained, but because plaintiff was no party to the suit. Again, the award of possession granted to plaintiff without the power of exercising it, amounts to a nullity. The enclosure would seem to be an open spot for the convenience of the several residents whose houses surround it, and this contest between plaintiff and defendants, who are relatives, evidently arises merely from motives of enmity.

ORDERED,

That the decision of the moonsiff in this case be reversed, and the suit be remanded for retrial on its merits. That the appellant do receive back the value of the stamp on his petition of appeal, and the costs of suit be adjusted upon the final decision of the case.

THE 26TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 47 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, Moonsiff of Chuprah, dated 10th February 1846.

Tika Panday and others, (Defendants,) Appellants,

versus

Koonj Beharee Panday, (Plaintiff,) Respondent.

THE particulars of this suit are detailed in case No. 43 of 1846.

Defendants preferred this separate appeal, urging that the "enclosure" claimed by plaintiff is for the general use and convenience of all the residents who live around it, and that the arbitration award upon which the moonsiff improperly rests his decision, was passed by one only of two arbitrators appointed.

The suit having been remanded for re-trial in case No. 43.

IT IS ORDERED,

That this separate appeal be struck off the file, and the appellants be entitled to a refund of the value of the stamp on their petition of appeal: the costs to be adjusted hereafter as directed in case No. 43.

THE 26TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 49 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 10th February 1846.

Sheonarain, (Defendant,) Appellant,

versus

Takoordas, (Plaintiff,) Respondent.

CLAIM, Company's rupees 30-10, principal and interest on account of a note of hand.

It was represented in this case, that defendant was indebted to plaintiff's father Gungapersad in the sum of Company's rupees 19, and that defendant had caused Gokulanund to give a note of hand in favor of plaintiff's father for payment, after the holidays, by an assignment on Nittah Koiree, one of his tenants.

A decree was at first given by the lower court on the 27th November 1845, against Gokulanund, but the case was sent back for retrial, as it did not appear that Gokulanund had rendered himself responsible, and the note of hand had not been required by the lower court, and which was necessary to ascertain with whom the responsibility rested.

The moonsiff of Chuprah now absolves Gokulanund, and passes a decree against Sheonarian on whose account it was executed.

It was held in appeal that this note of hand amounts to a promise, on the part of Gokulanund, to induce Sheonarain to satisfy plaintiff's claim after the holidays, but Sheonarain denies having been indebted to plaintiff's father, and the memorandum produced in proof (brought forward eight years after the alleged transaction) is not authenticated, and is not the account of a regular trader. I therefore pass a decree in favor of appellant with costs, and dismiss the claim in *toto*.

THE 28TH NOVEMBER 1846.

PRESENT : H. V. HATHORN, JUDGE.

No. 42 of 1846.

A Regular Appeal from a decision passed by Mr. C. McDonald, the Moonsiff of Pursah, dated 14th February 1846.

Mullick Bhundoo, (Defendant,) Appellant,

versus

Jubboolal, (Plaintiff,) Respondent.

CLAIM, to reverse a summary decree passed by the collector of Sarun, dated 19th May 1845, for Company's rupees 5-0-1, on account of 2 beegahs 7 cottahs of land in Misroleah, pergunnah Baal, due in 1252 Fussily.

Plaintiff set forth that he was the ticadar or farmer of Nowlas Koer and Hunoman Shewak, who had obtained 41 beegahs, 13 cottahs in Roderpoor Misroleah and Tolah Dubaleah, by deed of gift from Sookhalal, which land plaintiff held on an 11 years' lease for rupees 60-4 per annum, and that defendant had cultivated 2 beegahs, 7 cottahs of the said land in 1252 Fussily without paying rent, for which he had sued summarily, but had been referred to a regular suit by the collector under the provisions of Section 4, Regulation II. 1821.

Defendant admitted cultivating so much land, but describes it as situated in Hunoman's share, and produces that proprietor's acquittance for rent in that year.

Nowlas Koer and Hunoman Shewak appear as third parties, the former affirming the plaintiff's statement, the latter confirming the defendant's statement, and denying the plaintiff's lease.

The lower court upon the attestation of the "wasil-bakee" account, supported by proof of cultivation ascertained by the local ameen, passes a decree in favor of plaintiff, reversing the collector's order which granted replevin of distress.

It was held in appeal that the differences apparently existing between the heirs of Sookhalal should be decided either by arbitration or by a direct appeal to the civil court, and not in this indirect manner through the medium of a farmer, ostensibly to realize rents due from the ryots, but in reality to establish a proprietary title. In this case it is sufficient to observe that the plaintiff's farming lease is denied by one of the proprietors from whom it is alleged to have been obtained, and that the said proprietor acknowledges having received rent from the defendant for the period in question; and moreover Hunoman, the said proprietor, has sued plaintiff to cancel the said lease. Under these circumstances the decree of the moonsiff cannot be upheld, and appellant is entitled to replevin of distress as originally granted by the collector.

ORDERED,

That this appeal be decreed, and the decision of the moonsiff of Pursah be reversed, and the costs of suit in both courts be liquidated by respondent.

THE 28TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 44 of 1846:

A Regular Appeal from a decision passed by Pundit Lilladhur Tewary, ex-officio Moonsiff of Chumparun, dated 10th February 1846.

Luchmun, Rugober, Poorun, Basoo, Jewa, Bhunjun, and five others,
saltpetre makers, (Defendants,) Appellants,

versus

Maharajah Newul Kishore Sing, Bahadoor, (Plaintiff,) Respondent.

CLAIM, Company's rupees 290-6-0 on account of the half profits of 8 saltpetre factories in Soogown, pergunnah Mujhowah, during the year 1251 Fussily.

Respondent set forth, that the several appellants had worked eight saltpetre factories in the above-named village, in the year 1251 Fussily, and had realized an average of 22 maunds and 20 seers per mensem, equal to 180 maunds in the year, of which, however, he had received only 6 maunds and 30 seers, leaving a balance due to him on account of his half share as village proprietor of maunds 83-10-0, the value of which he estimated at rupees 3-8 per maund, or rupees 291-6-0, which amount, after deducting one rupee paid in cash, he sues to recover.

The several defendants (with one exception, Rugober) deny having entered into any engagements with plaintiff, or being in any way connected with the saltpetre factories alluded to, either individually or collectively. And Rugober states, that his interest extended to one factory only, which Moujee Lall, the rajah's ticcardar, let to him from 1251 to 1254 Fussily, in extension of a former lease, and that he had liquidated his rent for 1251 in full, and obtained a receipt, but that Sahibram, the father of Moujee Lall, had taken from him both his lease and receipt, on the plea of inspecting them and had destroyed them, with a view of enhancing his rent for the future, and for which act of violence he had prosecuted the said Sahibram in the magistrate's court, and which case is still pending.

The moonsiff of Chumparun decided that the objections of defendants were improper; that it appeared that plaintiff held the factories in 1251, under his own management, and that defendants were clearly liable; that although the nazir of the court (deputed to make local enquiry) found only *one* factory standing instead of *eight*, yet the evidence of plaintiff's witnesses proved defendants' responsibility,—passing a decree in favor of plaintiff for the amount principal with costs.

Defendants appeal against this decision, observing that plaintiff's witnesses were influenced, and the evidence was not to be relied upon. That the criminal prosecution now pending, showed that exaction and violence had been resorted to, and that the account, upon plaintiff's own showing, was manifestly wrong, as 22 maunds, 20 seers per month was equal to maunds 270 and not 180 maunds as stated in the plaint, and that the appellants, with one exception, had nothing to do with the factories.

It was held in appeal, that this claim is supported merely by the affidavit of the village putwary and two of the maharajah's servants. No written agreement exists, and upon local enquiry it has been discovered that out of *eight* factories, for which half produce is claimed as the proprietor's share, *one* only (worked by the defendant Rugober) was forthcoming. Rugober admits his responsibility for 1251 for this *one* factory, but pleads payment, and explains that he had preferred a criminal charge against the farmer for destroying his former lease and receipt for that year, and which case is now pending in the magistrate's court. Respecting the error pointed out by appellants, the calculation of respondent evidently embraces eight months only when the saltpetre factories are at work, and not 12, as erroneously stated. But in a case like this where the appellants deny any engagement whatever, or any connection as factory labourers, some further proof is deemed requisite than the bare assertion of the zemindar's putwary and two servants. Respondent urges in appeal that the nazir's enquiry proved that there *had been* eight factories, but that seven had been destroyed. This does not mend the matter. Proof is wanting to satisfy the court of the liability of the

several defendants for the half produce of the eight saltpetre factories in 1251 Fussily, as claimed by plaintiffs.

IT IS THEREFORE ORDERED,

That this appeal be decreed, with costs payable by respondent, and the decision of the moonsiff of Chumparun be reversed.

THE 28TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 46 of 1846.

An Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 16th February 1846.

Rugghonath Persad Tewary and Jajairam Tewary, (Third Parties,) Appellants,

versus

Suntoo Panday, (Plaintiff,) and Kunjbehari, (Defendant,) Respondents.

CLAIM, to establish the validity of a lease dated 1st Asar 1251 Fussily, for 2 beegahs, 16 cottahs, at 11 rupees' rent, in Bareja, pergunnah Baal.

In this case plaintiff, as lease holder of the above land from defendant, a farmer on advance, instituted a suit complaining that defendant threatened to dispossess him. Defendant, (at whose instance probably the suit was instituted) immediately filed an answer admitting plaintiffs' claim. The appellants, who are the maliks of the village, appeared before the lower court as third parties, objecting to this transfer of interests in favor of a "peshgidar," as it made no provision for the payment of rent due to them as proprietors.

The moonsiff of Chuprah passed a decree in favor of plaintiff, upholding his lease from the peshgidar, upon the admission of the latter to having granted it, and the further admission of one of the eight cultivators in support of the "peshgidar's" claim, observing that the decree could not affect the rights of the maliks.

The maliks appeal against this decision, urging that the cultivators are responsible to them for the rent of the land, and that the transfer of their interests to another, without any stipulation for the regular discharge of the maliks' rent, is both objectionable and illegal.

It was held in appeal that although the cultivators may, by subletting, transfer their interest to other parties, they still continue responsible to the proprietors for rent according to their engagements. But in this case out of eight cultivators, who are said to have given a lease of 15 beegahs and 5 cottahs to defendant for an advance of Company's rupees 200, *one only admits the transaction*, the remaining *seven deny any such transfer*. Thus a decree for possession in favor of an under tenant (plaintiff) who derives his title from a farmer whose lease is denied by the majority of the alleged grantors, is detri-

mental to the interests of the proprietors, as it upholds the possession of one, who is not directly responsible for the rent, and absolves those who *are* responsible; moreover it is an indirect confirmation of a title (the deed of lease on advance) the validity of which has been denied, and remains as yet unauthenticated.

ORDERED,

That this appeal be decreed, and the decision of the moonsiff of Chuprah be reversed. The costs of appellant to be liquidated by the respondents conjointly, and the respondents to pay their own costs.

THE 28TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 48 of 1846.

A Regular Appeal from a decision passed by Syed Asud Ali, the Moonsiff of Chuprah, dated 16th February 1846.

Ajudhapersad, (Defendant,) Appellant,

versus

Tallewund Sing, (Plaintiff,) Respondent.

CLAIM for replevin of distress for rent.

Defendant, it appeared, had distrained for Company's rupees 3-15, on account of rent for 16 cottahs of land in mouzah Mangee, alleged to have been cultivated by plaintiff in 1252 Fussily, setting forth that he (defendant) held the land on a lease from Ruggonath, one of the heirs of Sewandas, a "maafedar."

Plaintiff institutes this suit for replevin of distress, urging that he cultivated 2 beegahs out of 5 in Beebee Ameena's share, and did *not* cultivate the plot of land for which rent is claimed by defendant.

The moonsiff of Chuprah passed a decree in favor of plaintiff, as no "kabuleut" or counterpart lease was forthcoming, and the account presented was not signed by the village putwary, and plaintiff denied cultivating any land in defendant's share.

Defendant appeals urging that time was not allowed to file his proofs, but this plea is deemed a subterfuge. Proof was called for on the 19th January, and the case was not decided until the 16th of February (nearly a month,) besides plaintiff denies having cultivated, and defendant is unable to produce any engagement; and the account upon which distress issued, was not attested by the village putwary. It is not improbable that this claim may be set forth with a view to substantiate a "maafee" tenure in favor of the heirs of Sewandas, but of the existence of which no proof has been adduced in this case.

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.

THE 28TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 54 of 1846.

*A Regular Appeal from a decision passed by Syed Asud Ali, the
Moonsiff of Chuprah, dated the 9th March 1846.*

Goorchurndas, (Plaintiff,) Appellant,

versus

Musst. Chularoo, for self and as guardian of Doorgapersad, a minor son and heir of Sohonal, deceased, (Defendant,) Respondent.

CLAIM, Company's rupees 164-10, on account of a bond dated 12th February 1844.

Plaintiff represented that the deceased, Sohonal, borrowed from him on the above date Company's rupees 149-8, and executed a bond, promising to pay in three months, which promise not having been fulfilled he sues the heirs for the amount with interest.

Defendant, the widow of Sohonal, denies the transaction *in toto*, alleging that her husband, Sohonal, in his old age, placed three Cashmere shawls in charge of Jeetmul (plaintiff's father) for safe custody, and died without recovering them, and (his son) the plaintiff now refuses to restore them, and has brought the false claim as a counter-charge to meet her claim against him for the shawls.

The lower court discrediting the evidence rejects the claim, as the signature on the bond does not correspond precisely with Sohonal's signature on a security bond filed in the office.

It was held in appeal that the grounds for rejecting the claim were insufficient; the bond is produced, and is well attested by the subscribing witnesses, and the slight difference in the two signatures alluded to, is only such as might naturally ensue in the handwriting of any person after an interval of two years.

ORDERED,

That this appeal be decreed with costs, and the decision of the moonsiff of Chuprah be reversed.

THE 28TH NOVEMBER 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 55 of 1846.

*A Regular Appeal from a decision passed by Syed Asud Ali, the
Moonsiff of Chuprah, dated the 9th March 1846.*

Goorchurn Das, Goorsurn Das, and Bugwan Das, (Defendants,) Appellants,

versus

Musst. Chularoo, wife of Sohonal, deceased, (Plaintiff,) Respondent.

CLAIM, Company's rupees 300, the price of three pair of Cashmere shawls.

Plaintiff set forth that on the 20th Asar 1896 Sumbut (16th July 1839,) her deceased husband, Sohonal, deposited the above shawls with Jeetmul, defendant's father, which defendants (his heirs) refuse to restore; citing two witnesses to the delivery, three to defendants' admission, and one to subsequent demand.

Defendants deny the charge, regarding it as a counter claim from enmity, in consequence of their having demanded payment of a bond debt (No. 54 of 1846.)

The moonsiff of Chuprah passed a decree in favor of the plaintiff upon the evidence of the witnesses cited.

It was held in appeal that this counter claim has been apparently instituted from motives of enmity. The transaction alluded to, is said to have taken place 7 years prior to the institution of the suit. That one neighbour should deposit three pairs of shawls with a banker except for a consideration, or as security for an advance, upon the plea merely of placing them in safe custody, and then allow them to remain for a period of 7 years without even taking a receipt, is highly improbable. The evidence of the two witnesses to the delivery of these articles is moreover suspiciously concurrent, and the testimony of the other witnesses is unworthy of notice. I am induced to believe that this counter claim is without any foundation whatever. I observe that it was preferred a few months after defendant's claim against plaintiff for the bond debt.

ORDERED,

That this appeal be decreed with costs, and the decision of the moonsiff of Chuprah be annulled.

ZILLAH SHAHABAD.

THE 7TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 17.

*Appeal against the decree of Moulvee Syed Munowur Ally, Principal
Sudder Ameen of Shahabad, dated 6th June 1846.*

Nowbut Sing, (Defendant,) Appellant,

In the case of Bustee Sing, and Sheo Golam Sing, (Plaintiffs,)
Respondents,

versus

Musst. Sungoorah, wife of Jugut Sing, and mother and guardian of
Teeka Sing, Doorgah Sing, and Badjun Sing, minors, and sons
of the deceased aforesaid, and Degumber Sing, Sooumber Sing,
Sumdhur Sing, and Nowbut Sing, Defendants.

THIS suit was instituted, on the 9th September 1845, to recover
the sum of rupees 1298, 15 annas, money advanced on a mortgage
of half the village Koornee, and to set aside a fictitious deed of sale
dated 13th March 1817.

The plaint sets forth that Jugut Sing, Shew Sahoy Sing, Degumber Sing, &c. (defendants,) mortgaged half the village of Koornee, to Bustee Sing, (plaintiff,) and Teeka Sing, the ancestor of Sheo Golam Sing, (plaintiff,) for Sicca rupees 1201, and gave a bond dated 27th May 1835, in which they agreed to make good the money in ten years; that the plaintiffs then gave the property in farm, on an eleven years' lease, to their nephews Sugreem Sing and Purtab Sing, with an order that they should pay the interest of the mortgage money at the rate of rupees 144 annually, plus 7 rupees the Government revenue. That in the execution of the decree of one Atmaram Pandee against the wife of Jugut Sing, Nowbut Sing urged objections, as the purchaser from Jugut Sing and Isher Dutt Sing of a four anna share of the villages of Nowdeha and Mahorree, *Kurnee*, Nonorra, and Permanundpoor and Kursah, and the heirs of these sellers Jugut Sing and Isher Dutt Sing, petitioned to have Nowbut Sing's name registered in the collector's book. That this purchase on the part of Nowbut Sing is a fiction, and an attempt to defraud the plaintiffs and other bankers. That Jugut Sing and his heirs after him have always had possession of the whole of this property, and have alienated it in various ways; and in the six monthly statement of the putwarree, their names are entered as proprietors. That the plaintiffs have petitioned for a foreclosure of

the mortgage, but this suit is instituted to recover the money advanced before the period of foreclosure is completed.

Nowbut Sing, (defendant,) replies that, on the plaintiff's own showing, this purchase of his took place more than 24 years ago, the deed of sale cannot therefore be questioned, and that since the date of his purchase, his possession in the village has been continuous up to this date; that because a dakhil kharij has not been effected, the putwarry enters the names of the former proprietors in his six months' accounts; that in the decree of Gopal Chund *versus* Jugut Sing, he urged objections, when the dispute was amicably arranged, and he then petitioned for dakhil kharij; that in consequence of the death of his agent nothing further was done in the matter; that on the 8th September 1823, he instituted a suit in the court to get his name registered, which was struck off the file for his non-attendance. Prior to this in the case of Atma Pandee, as also in the case of Lutchmun Doss, he had urged objections which were favorably received in both cases, that he has been in the habit of getting summary decrees against the ryots, and that if the parties who sold the property to him have mortgaged it to a second party his deed of sale vitiates that mortgage.

The other defendants did not appear to defend the suit.

The principal sudder ameen decides that whether the sale to Nowbut Sing is valid or not, the deed of agreement dated the 17th January 1824, sets it aside, as far as the property involved in this suit is concerned. The possession of the plaintiffs through their tenants, is established by the oral evidence, and on the foreclosure of the mortgage, the plaintiffs will become the proprietors, this suit therefore to recover *the amount of the mortgage money* is opposed to Construction No. 898, and the plaintiffs must be nonsuited, each party paying their own expences.

Against this decree Nowbut Sing, (defendant,) institutes an appeal, considering himself to be injured by the declaration made in the judgment of the court, as to the validity of the agreement dated 17th January 1824, which he denies having entered into and the original of which was not produced, he also looks to be exempted from expence in this action.

JUDGMENT.

This suit to recover the amount of the mortgage money is certainly opposed to Construction No. 898, and the principal sudder ameen is quite right to nonsuit the plaintiffs, but he has gone quite beyond the record of the case, in deciding that Nowbut Sing's purchase is invalid: the principal sudder ameen ought to have been content with the award of a simple nonsuit. Neither do I see any reason why the appellant should be saddled with expences in this irregular suit. I therefore amend the decree, and declare that Nowbut Sing's purchase is not considered in the case, and that the plaintiffs are nonsuited and saddled with all expences.

THE 9TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 24.

Appeal against the decree of Moulvee Syed Munour Ally, the Principal Sudder Ameen of Shahabad, dated 4th July 1846.

Mohun Sahoo, (Defendant,) Appellant,

versus

Musst. Doolhin Utchruj Kour, wife of Raj Puttee Sing, for herself and ward Bundasree Persaud Sing, a minor, (Plaintiff,) Respondent.

THIS suit was instituted, on the 20th January 1846, to recover the sum of rupees 3,650-10, arrears of rent, principal and interest, accruing on a lease from 1245 up to 1252 F. S.

The plaint sets forth that the plaintiff is the proprietress of a half share in the villages of Kurgoon and Sondipoor, which she let to the defendant for an advance of 21,862-2-7, at a juma of 3500 Sicca rupees a year, on a lease from 1245 up to 1254 F. S., under a deed, dated 7th Assar 1243, and upon an agreement that the defendant should pay 602-8 annually as the Government revenue, that he should appropriate 2,623-8, as interest for the money advanced, and the balance of 274 rupees should be annually paid to the plaintiff. The defendant having failed to fulfil the last item of the contract, this suit is instituted to recover the sum of 274 rupees due year by year with the legal interest thereon.

The defendant admits the contract and pleads that the plaintiff gave a lease of the village of Khurounnee to Munnoo Lall, nephew of the defendant, from 1245 up to 1254 F. S., and that after writing out the lease bond and agreement, the plaintiff cancelled that lease, giving Munnoo Lall in satisfaction an order on the plaintiff for 150 rupees annually for the period of that lease, and which order dated the 17th Poos 1244, is in the possession of the defendant, and with regard to the balance of 124 rupees due to the plaintiff, the plaintiff directed the defendant to carry the sum to the plaintiff's credit on the advance account, allowing the interest of 8 annas per cent. on the sum, and that this suit is a vexatious one and an attempt to extort money.

The principal sudder ameen decides that the defendant admits the contract as regards the lease of the villages of Kurgoon and Sondipoor, and although the defendant's witnesses depose to the truth of the arrangement as regards Munnoo Lall, and his cancelled lease for the farm of Khunounnee, yet since they admit that the lease was cancelled some time before the farm was to have been entered upon, there is no apparent cause why the order for 150 rupees should have been granted as indemnification to Munnoo Lall, seeing

that he had never entered on the farm, and since the defendant has no document to show that the plaintiff did direct him to carry the balance of 124 rupees to credit on the advance account, the objections of the defendant are untenable and a decree is passed in favor of the plaintiff.

Against this decree the defendant institutes an appeal, pleading that the principal sudder ameen's finding is based on supposition, and this he attempts to gainsay by a very rambling train of argument.

JUDGMENT.

I uphold this decree under the provisions of Clause 3, Section 16, Regulation V. of 1831, because I agree with the principal sudder ameen in opinion, that the arrangement as regards the order to Munnoo Lall is improbable, inasmuch as the rent of the farm was only to have been 300 rupees, and the annual payment of 150 rupees as indemnification for cancelling the lease before the farm had been occupied at all, is preposterous, and because the appellant fails altogether in proving that the plaintiff ordered the appellant to dispose of the balance of 124 rupees in the manner stated by him.

THE 9TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 25.

Appeal against the decree of Moulvee Syud Munour Ally, Principal Sulder Ameen of Shahabad, dated 6th July 1846.

Hursahoy Sing, (Defendant,) Appellant, in the case of Syud Muhamud Husin, and Musst. Peer Bux, (Plaintiffs,) Respondents,

versus

Hursahoy Sing, Kumer Ally Khan, and Khadim Hosein Khan, Defendants.

THIS suit was instituted, on the 24th June 1845, to obtain possession of half the village of Kupuseah, with mesne profits, from 1249 up to 1252 F. S. Claim valued at 2,253-5-4.

The plaintiff sets forth that Ukber Ally Khan mortgaged half the village of Kupuseah to the plaintiffs, and then took a lease of the property from them from 1241 up to 1243 F. S., at a rent of 240 rupees per annum; that Musst. Peer Bux sued Ukber Allee as a defaulter for the half share of the rent for the years 1241 and 1242, and got a decree, part of which decree has been realised and part is still due. On the mortgager not making good the money, the plaintiffs petitioned for a foreclosure, and before the period for foreclosing the mortgage had expired, Ukber Allee died, and was succeeded by Kurm Allee, against whom the plaintiffs took out proceedings, and the mortgage was eventually foreclosed. On half the

village being brought to sale in satisfaction of a decree, the plaintiffs obtained an order from the court that due notice of the mortgage should be given at the time of sale. This notice was given, when the property was sold, and bought by Hursahoy Sing, who is now in the place of the former proprietors, and this suit is instituted to oblige him to act as such. Each of the defendants failed to defend the suit, and a decree was passed in favor of the plaintiffs, valuing the mesne profits at rupees 973-5-4.

Against this decree Hursahoy Sing instituted an appeal, when it was observed by this court that the principal sudder ameen had not ascertained the value of the mesne profits through the medium of an ameen. The case was therefore returned that this irregularity might be remedied. This has been done by the lower court, and a second decree passed awarding mesne profits amounting to rupees 429-3-2½.

Against this second decree Hursahoy Sing again appeals, and on this occasion he enters into a full defence of the suit, and urges no objection to the *amount* of mesne profits awarded.

JUDGMENT.

I uphold this decree in all its integrity, and fine the appellant fifty rupees under Section 3, Regulation XIII. of 1793, for having instituted a litigious appeal.

THE 17TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

Nos. 27 and 28.

Appeals against the decree of Moulvee Syud Munnour Ally, the Principal Sudder Ameen of Shahabad, dated the 17th July 1846.

Buktour Pandey, (Plaintiff,) Appellant,

versus

Baboo Dial Sing and Baboo Lal Bahadoor Sing, (Defendants,) Respondents.

THIS suit was instituted, on the 13th February 1846, to recover the sum of 1,800 rupees, the value of mesne profits accruing on a two annas share of talooka Bhudwar from 1228 up to 1241 F. S.

The plaint sets forth that Baboo Lal Bahadoor Sing sold to the plaintiff, with other property, a two annas share in the talooka of Bhudwar, and the purchase was completed in due form on the 5th August 1820, but the seller would neither agree to a dakhil kharij nor to give possession. A suit was therefore instituted against him in the zillah court of Ghazeepore to oblige him to give possession in that part of the property sold, which was situated in the Ghazeepore district, and a final decree was obtained by the plaintiff. That as regards the talooka of Bhudwar, Baboo Dial Sing prevented the

plaintiff's getting possession, on the plea of his holding a mortgage of it. A suit was instituted to settle the point, and on the 31st March 1834, a decree was passed in favor of the plaintiff, consequently the plaintiff obtained possession, and also recovered mesne profits from Baboo Dial Sing from the date of decree up to the date of possession, and this suit is instituted to recover mesne profits prior to the decree, that is, from the date of purchase up to the date of decree.

The defendant, Baboo Dial Sing, alone defends the suit, and pleads that the cause of this action having arisen more than twelve years ago, the suit is irregular and contrary to Regulation, that his possession in four annas of talooka Bhudwar sold to him by Baboo Lal Bahadoor Sing, since 1233, is established by decrees of court, the plaintiff can therefore have no claim against him for mesne profits accruing prior to that period.

The principal sudder ameen decides that since the suit was instituted on the 13th February 1846, the plaintiff is only entitled to mesne profits for half the Fusly year 1241, the amount of which must be ruled by the amount fixed by the decree for mesne profits passed in 1834: on that occasion the mesne profits for two years on two annas of talooka Bhudwar were ruled at rupees 179-10-9, and on Jumoe Khaur at rupees 28-10-9: a decree is therefore passed in favor of plaintiff for rupees 44-14-6, on account of Bhudwar, and rupees 7-2-6, on account of Jumoe Khaur.

Against this decree the plaintiff institutes an appeal, pleading that the calculation ought to be made from the 5th April 1836, the date on which he obtained a decree for possession, and that this suit is therefore within the statute of limitations.

JUDGMENT.

Without doubt the cause of this action arose in 1228 Fusly, and the suit was instituted on the 13th February 1846, corresponding with Phalgun 1253, and the only part of the appellant's claim which will come within the law of limitations is for half the year 1241. I therefore agree with the lower court in the view taken of the case, and confirm the decree under Clause 3, Section 16, Regulation V. of 1831.

THE 17TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 28.

IN this case the same parties litigate on the same grounds for mesne profits accruing on two annas of mouzah Jumoe Khaur.

The nature of the case, the decree passed by the lower court, the appeal, and the view taken of the case by this court, are fully detailed in appeal No. 27, just disposed of.

THE 17TH NOVEMBER 1846.

PRESENT: W. St. QUINTIN, OFFICIATING JUDGE.

No. 29.

Appeal against the decree of Moulvee Syed Munour Ally, Principal Sudder Ameen of Shahabad, dated 14th July 1846.

Rajnath Sing, (Defendant,) Appellant,

versus

Mr. R. Solano, (Plaintiff,) Respondent.

THIS suit was instituted, on the 16th January 1846, to recover the sum of 1766-11-4-5, being the amount, principal and interest, on a deposit bond, plus certain court expenses.

The plaintiff's declaration is, that Mr. Matthews, the former proprietor of the Dunwar factory, held certain villages in farm from Chowdree Soobkurn Sing and others, on a lease from 1243 up to 1251 F. S., at an annual rent of one thousand Sicca rupees; that on the demise of Mr. Matthews, Mr. Fusil became proprietor of the factory, and he paid the rent due from this farm for the year 1248 F. S., and in the year following his landlords required him to furnish security, when Rajnath Sing (the defendant) agreed to be surety on Mr. Fusil depositing the amount of one year's rent with him, and he furnished Mr. Fusil with a deed of deposit dated 27th April 1841, in which the defendant agreed to carry 12 annas per cent. interest to the credit of the deposit, and eventually to pay the sum deposited as the rent for 1251, the last year of the lease, and to furnish Mr. Fusil with the acknowledgment of his landlords for the same; that this arrangement was agreed to by all the parties concerned; that on the demise of Mr. Fusil, Mr. Solano (the plaintiff) purchased the factory, and on Rajnath Sing failing to pay the rent for 1251 with the money he held in deposit, the landlords instituted suits against him and the plaintiff, and got decrees in the sudder ameen's court dated 14th February and 29th March 1845, in these decrees Rajnath Sing was exempted from responsibility, but in appeal the sudder ameen's decrees were modified and Rajnath Sing was held responsible jointly with the plaintiff; that in executing these decrees, Rajnath Sing's property was not attached, and therefore the plaintiff paid the whole amount: this suit is therefore instituted to recover the amount of the sum deposited, with the interest thereon, as well as the amount for which Rajnath Sing was responsible in the decrees above mentioned.

Rajnath Sing in his defence pleads that being acquainted with the late Mr. Fusil, he had stood security for him; that he repudiates the deed of deposit, and that since that deed was produced in the sudder ameen's court by the plaintiff to procure his exemption from all liability and had failed, the present suit is groundless; that if

this sum of money had been deposited, the fact would have been mentioned in Mr. Fusil's surety bond, nor was any mention made of the transaction in the plaints of the suits instituted by the proprietors.

The principal sudder ameen considers that the oral evidence establishes the validity of the deed of deposit; that the decrees of court prove that the plaintiff was obliged to pay the rent for 1251 F. S., and therefore decrees the amount of the deposit with the interest agreed upon in favor of the plaintiff; and rejects his claim to the court expences, since the plaintiff, if he did so, satisfied them, at his own risk.

Against this decree, Rajnath Sing institutes an appeal, pleading that he has proved the deed of deposit to be a forgery, and that the decree of the lower court is altogether erroneous.

JUDGMENT,

I see no reason whatever to disturb this decision. The oral evidence produced by Mr. Solano establishes the validity of the deed of deposit, and it is most improbable that the appellant should have become Mr. Fusil's security merely on account of an acquaintance existing between them: a deposit and agreement of this nature is exactly what might be expected between the parties. I therefore uphold this decree under Clause 3, Section 16, Regulation V. of 1831.

THE 18TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 30.

Appeals against a decree of Moulvee Syed Munour Ally, Principal Sudder Ameen of Shahabad, passed on the 31st July 1846.

Musst. Woozeerun, (Defendant,) Appellant,

versus

Shah Kubbeer Oodeen, (Plaintiff,) Respondent.

No. 31.

Shah Kubbeer Oodeen, (Plaintiff,) Appellant,

versus

Musst. Woozeerun, Musst. Jahidah, Mosuma Abdoosmut, nephew of Woozeerun, Musst. Luthiff Oonissa, the daughter, and Iradut Hussain, son-in-law of Beebee Usmut, deceased, and Ukroon-Ool-Huk, (Defendants,) Respondents.

No. 32.

Musst. Luthiff Oonissa, (Defendant,) Appellant,

versus

Shah Kubbeer Oodeen, (Plaintiff,) Respondent.

No. 33.

Iradut Hussain, (Defendant,) Appellant,

versus

Shah Kubbeer Oodeen, (Plaintiff,) Respondent.

THIS suit was instituted, on the 17th March 1845, to set aside a fictitious deed of agreement dated 5th September 1826, regarding the sale of talooka Ghurrah, and to realize the balance of a decree amounting to rupees 4731-6-6, by a sale of the property.

The declaration of the plaintiff is, that he formerly instituted a suit in the provincial court at Patna against Beebee Usmut for certain assessed and rent-free estates, and on her attempting to alienate her property, he procured a notice to be served on her under Regulation II. of 1806, and on 28th June 1822, he obtained a decree, that in appeal the assessed estates involved in the suit were exempted. That after this the plaintiff obtained a decree for mesne profits, and in taking out execution, he gave in, in his inventory, the assessed estate of Ghurrah, as the property of Beebee Usmut, and the subject of the present suit. That the defendants urged objections, stating that the estate belonged to Musst. Woozeerun, who had made a fictitious purchase of it in the name of Ukroon-Ool-Huk: this claim was disallowed by the provincial court, but eventually admitted in a summary appeal to the Sudder, and on 30th July 1838, the plaintiff was told to seek his remedy in a regular suit. That the deed of agreement between Woozeerun and Ukroon-Ool-Huk, dated 5th September 1826, in which Woozeerun is declared to have been a party to the purchase, and eventually to have paid the whole of the purchase money, and become sole proprietor, is fictitious; that Beebee Usmut had been served with notice not to alienate her property; that up to the date of the plaintiff's final decree, Beebee Usmut's right and possession of the property had never been questioned; that had these transactions really occurred they must have come to light; that it has never been proved that either Woozeerun or Ukroon-Ool-Huk ever did make good the purchase money; that the latter was a *pauper*, and unable to do so; that had the money been actually paid to Beebee Usmut, the plaintiff's decree would have been satisfied from it; that the deed of agreement between Woozeerun and Ukroon-Ool-Huk has never been authenticated by proper authority; that the husband of Woozeerun on a former occasion attempted a forgery to prevent the plaintiff's getting

possession, which was set aside by the courts; and that this suit is therefore instituted to set aside the deed of agreement and to realize the balance of the plaintiff's decree from the property involved.

Musst. Woozeerun replies that from the date on which she paid the purchase money she has had possession of Ghurrah; that the seller, Beebee Usmut, has acknowledged her purchase in all the courts; that the plaintiff's suits against her and the other defendants have been dismissed on the validity of this deed of agreement, and therefore a second suit to try issue on that deed is irregular; she then proceeds to show several instances in which this ikrarnamah has been recognised by authority, and pleads, lastly, that the deed of agreement is dated 5th September 1826, twenty years ago, and that at the time of the sale to Ukróon-ool-Huk, and her subsequent agreement with him, the plaintiff had not obtained his decree for mesne profits against Beebee Usmut.

Two of the other defendants, Luthiffoonissa and Iradut Hussain, plead in confirmation of Woozeerun's pleas, and declare that they have nothing to do with the matter, and the remaining defendants neglect to defend the suit.

The principal sudder ameen decides that this transaction has an appearance of fraud, since it took place amongst the members of the same family, at the time too when the plaintiff had obtained a decree against them for possession, and the deed of agreement dated the 5th September 1826 has never been produced in original, from which the real nature of the transaction might have been gleaned; and from the admission of both parties there is good reason to infer that the deed was written on an inadequate stamp of eight annas; that it was dated some time prior to the institution of the suit for mesne profits, on the part of the plaintiffs, and yet it was not produced in the dakhil kharij case before the collector till after that suit was decided; that the mere mention of partnership in the deed of agreement does not constitute a deed of partnership, and that where such valuable property was concerned, a deed was required. But since on the strength of this deed Musst. Woozeerun obtained a decree in the judge's court, dated 21st September 1841, giving her possession of other villages, it is not for this court to question the validity of it. The suit is therefore dismissed, but the features of the case require that each party should pay their own costs.

Against this decree both parties institute appeals. The plaintiff on the score that the validity of the deed of agreement has never been investigated, and the defendants because they deny their liability to pay expences in a suit which has been dismissed.

JUDGMENT.

The remarks made by the principal sudder ameen in this case are superfluous. Mr. Alexander's decree, dated 21st September 1841,

recognises the validity of this deed of agreement and of Musst. Woozeerun's right to possession from it, and this decree has been upheld in appeal before the Sudder Court. The plaintiff in that suit is the plaintiff in the present one, and this is palpably an attempt to try issue again on a question which has been finally disposed of, in opposition to clause 16, Regulation III. of 1793. I am quite unable to discover any features in this case to make it either reasonable or just that the defendants should be saddled with their expences. I therefore modify the decree as far as exempting defendants from all liability and holding the plaintiff responsible for all expences both in the original suit and in the present appeal cases.

THE 21ST NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, JUDGE.

No. 34.

Appeal against a decree of Syed Munour Ally, Principal Sudder Ameen of Shahabad, dated the 27th August 1846.

Moulabux Rai, Deega Rai, Gokool Chund, farmer, and Pertab Rai, cultivator, (Defendants,) Appellants,

versus

Musst. Sook Bassy, (Plaintiff,) Respondent.

THIS suit was instituted, on the 5th March 1846, to obtain possession of half the village of Koorooj, and to become recorded proprietor, with mesne profits for the kureef and budwee harvests of 1253 F. S.; the whole valued at 1053 rupees, 8 annas and 6 pie.

The plaint sets forth that this village of Koorooj was acquired by Kunchun Rai, the common ancestor of plaintiff and defendants; that he died, leaving five sons, Geedh Rai, Sheo Rai, Jeet Rai who died without heirs, and Pirthee Rai, who was the great grandfather of Dookee Rai, the husband of the plaintiff, and Soojait Rai, the ancestor of the defendants Moula Bux Rai, Deega Rai, and of Khodabux Rai, who have always, one after another, enjoyed a proprietary right in half this village, and Pirthee Rai and his descendants have held the other half; that it was resumed in the name of Dookee Rai as half proprietor, and the defendants as holding the other half; that at the time of the settlement Dookee Rai was prevented by sickness from attending, and consequently the settlement was made in the name of the defendants; that hence the defendants made themselves out to be the proprietors of the whole village, and their farmers Gookool Chund had a dispute with the plaintiff's farmer, which became the subject of an Act IV. 1840 case, when the magistrate

ruled the whole village to the possession of the defendants, and his order was reversed by the sessions judge, who gave possession of half the village to the plaintiff; that the plaintiff then instituted a civil suit in the sudder ameen's court to reverse the settlement and get her name recorded as proprietor, which was dismissed without investigation; that the defendants also instituted a civil suit to set aside the orders of the sessions judge, and eventually obtained a decree in their favor; that the property is ancestral, and this suit is instituted to obtain possession in half of it.

The defendants in reply deny the right of the plaintiff to any portion of the estate, and plead that from 1165 up to 1203, this estate was registered as the property of their ancestor Soojait Rai, and after him in the name of Khodabux Rai, the uncle of Deega Rai, and no register of the name of Dookee Rai, the plaintiff's husband, can be found; that if his name had been so, he would have raised objections at the time of the settlement and would have been admitted to it; that in 1805 a suit was instituted between Madarbux Rai, the ancestor of Moulabux Rai, on the one side, and Geenoo Ray himself, and Deega Rai, the heir of Immaumbux Rai, to settle the extent of their respective shares, and in 1810 a decree was passed giving Madarbux Rai 40 beegahs of land and dividing the rest equally between the other parties; that when an ameen was appointed to distribute accordingly, he allowed 27 beegahs without naming any extent of share, or any particular cultivators, to Dookee Rai, and this is inserted in the ameen's measurement papers in 1811; that Dookhee Rai remained in possession to this extent up to his death, and for upwards of twelve years he remained content; that his heirs, Ushoo Rai and others, sold the holding to Jewut Rai; that the institution of this suit is therefore opposed to the statutes of limitation; that on the 29th November 1845, the sudder ameen moonsiff gave them a decree against the plaintiff, reversing the session judge's award under Act IV. of 1840, and also decreed to them mesne profits, and his decree was upheld by the judge; that the plaintiff instituted a suit to get her name recorded as proprietor, and on seeing no chance of success allowed the cause to go by default.

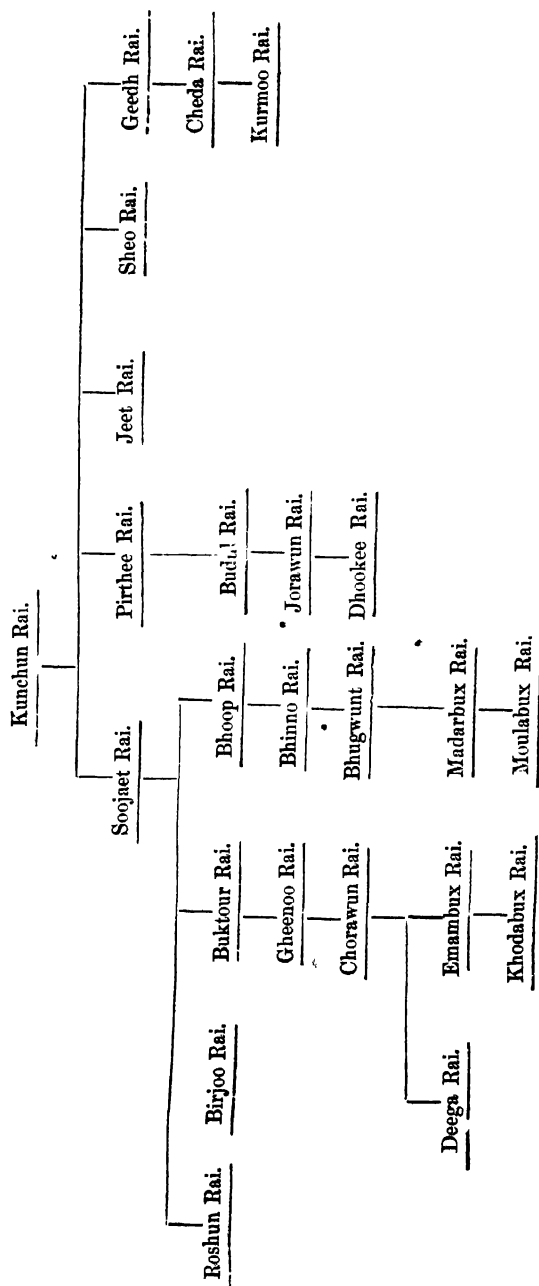
The principal sudder ameen decides that the genealogical trees filed in the case and other papers show that this village was acquired by Konchun Rai, the common ancestor of both parties, and the defendants produce no proof of its having been acquired by Soojait Rai; that at the foot of the agreement dated 5th Maugh 1246 F. S., entered into with Sohawun Chund and Gopal Sing, the insertion of the detail of the extent of land is most irregular and out of place, it is inserted with different ink, and is palpably a postscript, and from the account given of this transaction to which all were parties, by Sohawun Chund, it is evident there was no occasion for any detail of shares at all, and especially none for any detail of the

extent of land, if there had, there should also have been a detail of rent on each lot; that the decree of the civil court of this district dated 7th July 1840, in which Madardux Rai was plaintiff and Geena Rai and Deega Rai were defendants, and which suit was amicably settled between the parties on an agreement that Madardux Rai should receive 40 beegahs, and the remainder be equally divided between the other sharers, does not bar this suit, seeing that neither the plaintiff nor her husband, Dookee Rai, were parties to that suit, nor were they parties to the partition which resulted from that suit; that the defendants produced no documents which invalidate the claim of the plaintiff, and the oral evidence produced by the plaintiff proves that Dookee Rai had possession of half the village; that the decree obtained in the sudder ameen's court, dated 19th November 1845, does not affect this claim, since the only point settled thereby was with whom the settlement was actually made; but since the plaintiff does not prove the mesne profits, a decree is passed in favor of the plaintiff, giving her possession in half the village, and that her name be recorded as the proprietor thereof.

Against this decree the defendants institute an appeal, urging the same pleas against the plaintiff's claim as they did in the first instance, and denying that the possession of Dookée Rai is proved to have been more than the twenty-seven beegahs, and that his right and title in the estate was investigated and disposed of in the sudder ameen's decree.

JUDGMENT.

A glance at the genealogical tree, the authenticity of which is not questioned by either party, shows that Dookee Rai, as the lineal descendant of Kunchun Rai, has a clear hereditary right to a half share in his estate. The proceedings of the resumption and settlement officers prove that this estate was in the possession of Kunchun Rai, the common ancestors of these litigants, and the oral evidence produced by the plaintiffs is very positive as to the fact of Dookee Rai having been the recognised proprietor of half the estate: this is supported also by the evidence of Sohawun Chund, the farmer, who declares that he took the estate in farm from these parties collectively, and the agreement entered into with him has evidently been falsified by a fresh insertion at the foot of the document, by which an attempt is made to show that Dookee Rai only leased out 27 beegahs, as his share in the estate. The point decided by the sudder ameen was with whom was the settlement of the estate actually made, not with whom it ought to have been made; and since Dookee Rai was no party to the suit which ended in a distribution of certain shares in the estate, his right and interest were in no way affected. As I see no reason to alter this decision, I confirm the decree under Clause 3, Section 16, Regulation V. of 1831.

Genealogical Table connected with appeal case No. 34.

THE 21ST NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 36.

Appeal against a decree of Syed Munour Ally, Principal Sudder Ameen of Shahabad, dated 19th August 1846.

Buktour Pandee, for himself and as the guardian of Muthoora Persaud Narain, minor, and heir and grandson of Bahorun Pandee, (Plaintiffs,) Appellants,

versus

Inderjeet Sing, and twenty-three others, (Defendants,) Respondents.

THIS suit was instituted, on the 7th March 1846, to procure exemptions from responsibility in the sum of 3124-15-6, being the amount, principal and interest, in a decree for mesne profits paid on the plea of partnership in 140 beegahs, 7 biswas of land in the village of Puteah.

The plaint sets forth, that the defendants instituted a suit against the plaintiffs, and one Utchruj Loll, and obtained a decree for mesne profits, principal and interest, accruing on 140 beegahs, 7 biswas of land in the village of Puteah, and court expences, amounting in all to 4107-0-6, and this decree was upheld in appeal; that Utchruj Loll was proprietor of half the village of Utundah, and Buktour Pandee and Bahorun Pandee were joint proprietors in the other half; that the suit ought therefore to have been divided into two shares, which was not the case; that from the resolutions of the Sudder Dewany dated 22d December 1837, and 28th December 1840, interest ought to have been calculated from the date on which the amount of mesne profits was fixed, which was not done; that two miscellaneous petitions presented by the plaintiff on the subject were not attended to, and this suit is therefore instituted to try issue on the points above named.

The defendants plead that their decree was collectively against the plaintiffs, and that without paying the full amount none of the parties are entitled to exemptions, and that these objections of the plaintiffs have been overruled in all the courts, and the institution of this suit is opposed to Construction No. 1129 dated 9th February 1838.

The principal sudder ameen decides that since the decree obtained by the defendants was collectively against the plaintiffs, the execution must be so also, a fresh suit against the decree holder is not cognisable, that the resolution of the Sudder Dewanny Adawlut under date the 22d December 1837, has nothing to do with a question which has been disposed of in a regular suit, and the plaintiffs' suit is therefore dismissed.

Against this decree the plaintiffs institute an appeal on the same grounds stated in their plaint.

JUDGMENT.

Since the institution of this suit is clearly opposed to Construction No. 1129 dated 9th February 1838, I see no reason to disturb this decision, and therefore uphold the decree under Clause 3, Section 16, Regulation V. of 1831.

THE 23D NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No 21.

Appeal against the decree of Roy Shunker Loll, Sudder Ameen of Shahabad, dated 8th June 1846.

Gunesh Persaud, (Plaintiff,) Appellant,

versus

Kallee Churn Sing, Hurdeal Sing, Goordeal Sing, Nundroop Sing, Umrit Lal, Dowun Sing, and Sunder Loll, (Defendants,) Respondents.

THIS suit was instituted, on the 23d September 1845, to recover the sum of 410 rupees, principal and interest, on a bond.

The plaint sets forth that Kallee Churn Sing and Hurdeal Sing borrowed 250 rupees from the plaintiff, and, in satisfaction of the debt, mortgaged 10 beegahs, 10 biswas of private cultivation in their share of the village of Ramdeerah, the conditions of the mortgage deed, dated 25th Bysack 1247 F. S., being, that the plaintiff should have possession from 1248 up to 1259 F. S., and satisfy himself for the debt; a pottah and kabooleat were also exchanged between the contracting parties. That five years have elapsed without the plaintiff having obtained possession, and that Goordeal Sing and the remaining defendants, in collusion with Kallee Churn Sing and Hurdeal Sing, keep possession to defeat the fulfilment of the conditions of the mortgage; and this suit is therefore instituted to recover the principal and interest of the money advanced to Kallee Churn Sing and Hurdeal Sing.

The defendants, Kallee Churn Sing and Hurdeal Sing, deny having kept the plaintiff out of possession, and declare that Goordeal Sing and the others, who are relatives of the plaintiff, held possession of the land mortgaged, by sufferance of the plaintiff; and that their shares have always been distinct and separate from Goordeal Sing and the other shareholders; that the land mortgaged is specified in the kabooleat to which Goordeal Sing, Nundroop, and the other shareholders, were witnesses; that the plaintiff enjoyed the usufruct of the land through the medium of Goordeal Sing, &c.

Defendant, Sunder Loll, denies having kept the plaintiff from possession, and declares that, after the mortgage, the plaintiff made

the land over to Goordeal Sing, Nundroop Sing, and Umrit Loll, who collected the produce from it, but that he is not aware whether they paid rent to the plaintiff or not.

Nundroop Sing and Umrit Loll reply that it is not specified in the mortgage deed, that Kallee Churn Sing and Hurdeal Sing mortgaged the land of their own private cultivation; that the land in question, which is said to be in their possession, is held by Goordeal Sing, and that they themselves have nothing to do with it.

Goordeal Sing replies that Kallee Churn Sing and Hurdeal Sing, in collusion with Sunder Loll and others, have kept the mortgage land in their own possession, and have not made it over to the plaintiff.

The sudder ameen decides that it is proved by the evidence to the kabooleat and by other papers in the case, that the mortgaged land, namely, 10 beegahs, 10 biswas was first made over by the plaintiff to Goordeal Sing and others, and afterwards to Goordeal Sing alone, and the investigation made by the ameen and also the reply of Sunder Loll, clearly establish that the land in question is in the possession of Goordeal Sing. The case is therefore dismissed, and this decision is to be no bar to any fresh suit which may be instituted against Goordeal Sing.

Against this decree the plaintiff institutes an appeal, reiterating the pleas set forth in his original declaration.

JUDGMENT.

This is a conditional mortgage, and to bar this claim the possession of the appellant must be clearly established. The respondents plead that Goordeal Sing held the land mortgaged on sufferance for the appellant; and in this way they attempt to prove the possession of the appellant. Oral evidence is the only proof produced to establish this point, and it requires something more than this to satisfy the court that the mortgagers acted up to their agreement, and did give possession to the mortgagee. Goordeal Sing is a partner with the mortgagers in the estate, which makes it still more incumbent that some written agreement should have passed between him and the appellant. As I consider the possession of the appellant is not proved, I reverse the decree of the lower court, and give the appellant a decree for principal and interest with all costs against the mortgagers, Kallee Churn Sing and Hurdeal Sing, and exempt the other respondents from liability.

THE 23D NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 35.

Appeal against a decree of Syud Munzur Ally, the Principal Sudder Ameen of Shahabad, dated 21st August 1846.

Muhabeer Surn Sing, (Plaintiff,) Appellant,

versus

Lal Rameshur Buxsh Sing, (Defendant,) Respondent.

THIS suit was instituted, on the 18th December 1845, to recover the sum of 1,905 rupees, being the amount, principal and interest, of maintenance accruing from 1248 up to 1252 Fusly.

The plaint sets forth that Baboo Sheo Purkash Sing, the father of the defendant, always maintained the plaintiff; that Baboo Sheo Purkash Sing and Baboo Hur Purkash Sing gave up their birth-right, according to a deed of agreement dated 20th Kartick 1244, and Maharaja Jye Purkash Sing made over certain property as a maintenance for their sons Lal Rameshur Buxsh and Lal Burmeshur Buxsh; that at the time this was done, Baboo Sheo Perkash Sing and Baboo Hur Purkash Sing paid to the plaintiff from their incomes a maintenance of 575 rupees annually, and directed their sons to make this sum good to him,—the defendant by paying 300 rupees a year, and Lal Rameshur Buxsh 275 rupees; that the latter has regularly paid his quota, and the defendant did so from 1244 up to 1247; that the plaintiff holds a bond from the defendant dated 24th Bhadoon 1244, in which he agreed to pay this pension, and this suit is instituted to recover the amount accruing from 1248 up to 1252, with interest thereon.

The defendant pleads in reply, that it is entirely optional with him to pay this pension, and that he is in no way answerable for his father's acts; that the deed held by the plaintiff is of no use to him, since stipends are only paid for service or from favour, and that for some time past enmity has existed between him and the plaintiff.

The principal sudder ameen decides, that the court cannot entertain a suit of this nature, since the defendant declares that it is optional with him to pay this pension, and that according to the Construction No. 230, a claim for pension is not cognizable by the civil courts: the suit is therefore dismissed, and the matter left to be disposed of by the parties concerned, each party paying its own expences.

Against this decree the plaintiff institutes an appeal, on the plea that he is entitled to a decree, and that the Construction quoted by the principal sudder ameen is not applicable to the case.

JUDGMENT.

I agree with the principal sudder ameen, that it is optional with the defendant to continue to pay this stipend. An act of generosity

of the father is not binding in law upon the son; and when the Maharajah made over a maintenance to the respondent, he did not in any way bind the respondent down to pay a yearly stipend out of it to the appellant. The Construction quoted by the lower court is not applicable to the case: it declares that claims on the *Government for pensions* are only cognizable by collectors. This mistake has probably laid the foundation of this appeal, which is hereby dismissed, and the decree of the lower court upheld, and copy of the order sent to the principal sudder ameen for his information and future guidance.

THE 24TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 235.

Appeals against a decree of Mr. A. Almeida, the Additional Moonsiff of Shahabad, dated 13th July 1846.

Rejha Misser, (Defendant,) Appellant,

versus

Deendal Sing and Kalee Churn, Farmer, (Plaintiffs,) Respondents.

No. 237.

Dhotal Misser, (Defendant,) Appellant,

versus

Deendal Sing and Kalee Churn, Farmer, (Plaintiffs,) Respondents.

No. 240.

Musst. Khumliah, (Defendant,) Appellant,

versus

Deendal Sing and Kalee Churn, Farmer, (Plaintiffs,) Respondents.

THESE suits belong to cause No. 244, decided by this court on 26th October 1846, in which case the moonsiff's decree was upheld. The same parties are litigants, and in these cases the defendants are the appellants: in No. 224 the appeal was on the part of the plaintiffs. For the reasons recorded in my decision in appeal No. 224, I uphold the moonsiff's decree in each of these cases.

THE 24TH NOVEMBER 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 308.

Appcals against a decree of Mr. A. Almeida, the Additional Moonsiff of Arrah, dated 28th August 1846.

Sheolal, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 85-3, arrears of rent.

No. 310.

Bishnath Chowdhurry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 33-9-3, arrears of rent.

No. 311.

Jugurnath Gwala, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 15, arrears of rent.

No. 312.

Asish Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 15-13, arrears of rent.

No. 313.

Bhikharee Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 64-5-9, arrears of rent.

No. 314.

Hulkhoree Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 76-13-6, arrears of rent.

No. 315.

Soodursun Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 54-11, arrears of rent.

No. 316.

Seonarain Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 63-15-3, arrears of rent.

No. 317.

Bhriagnath, heir of Sewa Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 57-15-6, arrears of rent.

No. 318.

Runglall Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 54-12-6, arrears of rent.

No. 319.

Bijadhur and others, (Defendants,) Appellants,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 35-1-6, arrears of rent.

No. 320.

Burn Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 29-15-3, arrears of rent.

No. 321.

Ch'hedêe Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.
Rupees 38-4-6, arrears of rent.

No. 322.

Ochunt Chowdry, (Defendant,) Appellant,

versus

Maharajah Maheshur Bux Sing, (Plaintiff,) Respondent.

THIS suit was instituted, on the 27th February 1846, to recover the sum of rupees 17-10-9, principal and interest, of arrears of rent, accruing for 1252 Fusly, on 3 b. 14 c. 19 d. of cultivation, in the village of Ghore Pokhur.

The additional moonsiff has correctly recorded the merits of these suits, in the following words :

" The plaintiff prosecutes the ryotts of mouzah Ghore Pokhur for the rent of the year 1248 F. S., at the rates mentioned in the notice served on them by him, in the month of Jeyth 1247 F. S., agreeably to the provisions of Sections 9 and 10, Regulation V. of 1812, and the instruction of the late additional judge of this district, recorded in his decrees, dated 14th December 1837 and 16th February 1838, in certain cases, in which Maharajah Jy Perakash Sing Bahadoor, the late father of plaintiff, was complainant, and the ryotts of mouzah Ghore Pokhur, defendants; but plaintiff's suits were dismissed by the additional moonsiff of Arrah on the 11th September and 23d November 1843, on the ground of his not having conformed to the Regulation above quoted, by issuing only one notice to all the ryotts, when it was necessary to the due fulfilment of the law to serve each ryott personally with a separate notice, and in the event of his abscondment, or concealment, to affix the notice at his usual place of residence; these decisions of the additional moonsiff were upheld by the judge on the 18th December 1843 and 17th January 1844, on appeals being preferred by the plaintiff. Whereas since the purchase of mouzah Ghore Pokhur by plaintiff's ancestor, at a revenue sale, the ryotts have not come to any settlement with plaintiff for their rents; plaintiff, induced by the instruction of the additional judge above noticed, issued separate notices to each of the ryotts of mouzah Ghore Pokhur, at the rate of Sicca rupees 3-13-1, being a rate adopted by the collector in the settlement of the estate, and mentioned in his proceedings dated 10th May 1825, but the ryotts having all concealed themselves, one copy of the notice was stuck up at the dwelling houses of the ryotts, and the other reserved for the purpose of being filed. Notwithstanding the issue of these notices, defendant has cultivated his lands for the year 1252 F. S., without having taken any pottah, or entering into any arrangement about the rents. Plaintiff therefore lodges this action to realise the rents of the year 1252 F. S., from defendant for 3 beeghas, 14 cottahs, 19 doors, of land, at the rate of Sicca rupees 3-13-1, inserted in the notice.

Defendant answers that he has hitherto cultivated his lands at the long standing rate of rupees 2-4 per beegah; that Maharajah Jey Perakash Sing Bahadoor, ancestor of plaintiff, after his purchase of the estate in 1237 F. S., realized from him the rents of the year 1238 F. S., at that rate; that Maharajah Jey Perakash Sing Bahadoor having complained for the rents of 1239 F. S., at an increased rate, his suit was dismissed by the late additional judge, and defendant's old rate of rupees 2-4, upheld; after which Maharajah Jankee Pershad Sing, styling himself guardian of plaintiff, also preferred several suits for the rents of 1248 F. S., at an enhanced rate, but his suits were dismissed by the additional moonsiff; the old rate of rupees 2-4 being again maintained. A period of upwards of

twelve years having expired, since the purchase of mouzah Ghore Pokhur, plaintiff's suit for rents at a higher rate, is not admissible, Plaintiff holds no kubooleut from defendant, no notice was ever served upon defendant, and the notice enjoined by law can only be served the first year after purchase, and then too in the event of collusion between the ryotts and the former proprietors being discovered, nothing of which was ever practised by defendant. The additional moonsiff never directed plaintiff to issue notices upon the ryotts. Plaintiff's ancestor complained before, for rents at the rate of rupees 3 per beegah; but plaintiff now sues at Sicca rupees 3-13-1, which shews a discrepancy. Defendant offered to pay plaintiff's umlahs his rents, at the rate of rupees 2-4, but intending to demand higher rents, they would not receive it. Defendant only cultivates 3 beegahs, 5 cottahs of land in mouzah Ghore Pokhur."

The moonsiff's judgment is as follows:

"From the record of this case it is apparent, that mouzah Ghore Pokhur, pergunnah Arrah, the property of Meer Wuzeer Allee, having been brought to sale for arrears of Government revenue, was purchased by Maharajah Jey Perakash Sing, the ancestor of plaintiff, on the 23d August 1830, corresponding with the 19th Bhadoon 1237 F. S., for the sum of rupees 12,000, through his mokhtar Hur Sahae Sing. One year after the purchase, that is, in the year 1238 F. S., seventeen ryotts of the estate presented a petition to the judge, stating that disputes had arisen between them and the auction purchaser, regarding their rates and rents, upon which, a mohurir of the judge's nazir, by name Laik Ram, was deputed for local enquiries, who reported that the ryotts and the auction purchaser having come to an amicable adjustment, the ryotts had executed a solehnamah, stipulating to pay the rents of the year 1238 F. S., at the rate of rupees 2-4 per biggah, and from the year 1239 to 1242 Fusly, at the rate of rupees 3 per biggah. The solehnamah was also filed. Maharajah Jey Perakash Sing Bahadoor afterwards instituted several actions before the moonsiff of Arrah, against Bal Govind and others, for the rents of the year 1239-Fusly, at the rate of rupees 3 per biggah, being the same that was agreed to, in the solehnamah, and obtained decrees from the moonsiff, which, on regular appeal, were affirmed by the principal sudder ameen; but on special appeals being preferred, the decisions of the lower courts were reversed by the additional judge on the 14th December 1837 A. D.; the solehnamah, which the ryotts denied, being disproved, the former rate of the ryotts, viz. rupees 2-4 per biggah, upheld, and the auction purchaser instructed to pursue the course prescribed in Sections 9 and 10, Regulation V. 1812, if desirous to enhance the rents of the ryotts. After this, Maharajah Jey Perakash Sing Bahadoor petitioned for a review of judgment,

and, filing copy of the proceedings of the collector, dated 10th May 1825, in which the rates prevalent in, and at which mouzah Ghore Pokhur, was settled, were put down at rupees 5-8½, rupees 4-4½, and rupees 3-13½, prayed that rents may be awarded to him, at one of these rates; his petition however was rejected on the 16th February 1838 A. D., the instructions formerly given him being again repeated. In conformity to these instructions, the auction purchaser issued one single notice, to all the ryotts collectively, requiring rents from them, at the rate of rupees 3-13½, and laid several actions against Nurkoo Kandoo and other ryotts, for the rents of the year 1248 F. S.; but his suits were dismissed by the late additional moonsiff of Arrah, on the 11th September 1843, on the score of the service of one notice, upon all the ryotts of an estate, not being enough, to the fulfilment of the law, which requires that every ryott should be served with a separate notice: these decisions were, in appeal, upheld by the judge. Plaintiff having again issued separate notices to each ryott, containing the quantity of land in his cultivation, and the rate of assessment, viz. rupees 3-13-1 per biggab, now sues defendant, and forty-seven other ryotts, for the rents of the year 1252 F. The notices served upon the ryotts are in substance as follows: "Mouzah Ghore Pokhur having been purchased by me at public auction, and your jumma not having been yet settled, I hereby notify to you, agreeably to Sections 9 and 10, Regulation V. 1812, that you take a pottah from my umlahs, and execute a kubooleut, before you cultivate your lands for the year 1252 Fusly; failing in which, you will be charged rents for your holding, at the rate of rupees 3-13-1 per biggab;" and at the foot of the notice, is inserted the quantity of land in the cultivation of the ryott, and the rate of assessment rupees 3-13-1, which makes the annual jumma quite apparent, by an easy calculation. Although defendant and the other ryotts deny receipt of the notice, yet from the evidence of six witnesses produced by plaintiff, the service of the notices, at the houses of the ryotts, in consequence of their absence, is most satisfactorily established; this fact also receives further confirmation from a petition of information, presented to the judge, by Sheik Emam Buxsh and Sheik Noorool Hussein, mokhtars of the plaintiff, on the 6th June 1844: the notices were affixed at the residence of the ryotts, on account of their abscondment, which is quite in accordance with Section 10, Regulation V. 1812 A. D. The three witnesses brought by defendant to prove non-receipt of the notice by him, cannot refute the service of the same, because it is possible, that when the notice was served, the witnesses of defendant may have been absent, and ergo are, as they depose, ignorant of it. The notice above referred to, having been served on the defendant, and the other ryotts, it was obligatory on

them to attend, and, filing a kubooleut, to take a pottah; not having done which, and yet cultivated their lands, the defendant, as well as the other ryotts who were similarly served with notices, are bound to pay their rents at the rate mentioned in the notices, agreeably to the provisions of Sections 9 and 10, Regulation V. 1812. The wakeel of the defendant objects, that the notices issued by plaintiff are contrary to Section 9, Regulation V. 1812, inasmuch as the specific amount of rent, demandable for the year, is not inserted in them. This objection is quite inadmissible, because I find, on a close examination of the notice, that the quantity of land, in the cultivation of each ryott, together with the rate of assessment, are clearly noted down; from which the total amount of rent is quite manifest; thus I do not perceive any informality, or contravention to the law, above cited; for instance, if a parcel of five biggahs of land be taxed at 2 rupees per biggah, the insertion in the notice of five biggahs, at 2 rupees per biggah, as much indicates the annual jumma to be 10 rupees, as the entry of 10 rupees itself. The defendant does not quote any precedent in support of this objection, which for the above reasons I reject altogether. Defendant also objects, that after the expiry of more than 12 years from the date of purchase, plaintiff is not entitled to the privilege of the notice prescribed by Sections 9 and 10, Regulation V. 1812. This is also a futile objection, for having never accepted of rents from defendant, and the other ryotts, at the rate of rupees $2\frac{1}{2}$, except in the year 1238 Fusly, and that too, in consequence of the solehnamah executed by them; and the additional judge, and additional moonsiff, having all along instructed him to conform to the rules laid down in the above quoted regulation, plaintiff is certainly entitled to receive his rents, at the rate mentioned in the notice; for the ryotts, on their part, have entirely neglected to comply with the requisition contained in the notice, and have thus rendered themselves liable to the penalty comprised in it. The rate at which plaintiff demands rents is also very fair and equitable; and shows that plaintiff has been very lenient to the ryotts, for on referring to the collector's settlement proceedings dated 10th May 1825, I find that mouzah Ghore Pokhur was settled with the former proprietor at the rates of Sicca rupees 5-8 $\frac{1}{2}$, Sicca rupees 4-4 $\frac{1}{2}$ and Sicca rupees 3-13 $\frac{1}{4}$; and it would be an act of glaring injustice and hardship, if the proprietor's claim for the lowest of these rates, were refused, seeing that he has conformed to the law in every respect. Although with reference to Construction No. 234, dated 3d February 1816, it was necessary to enquire if the land cultivated by defendant, is capable of being taxed at the rate of rupees 3-13 $\frac{1}{4}$, which is mentioned in the notice; but when it is evident from the settlement proceedings of the collector, that the estate Ghore Pokhur has been settled at this, and two higher rates,

after very careful local enquiries held by the collector, no fresh investigation appears called for. The defendant and the other ryotts allege, that they do not cultivate the quantity of land for which they have been charged; but the cultivation of the same by them having been proved by the testimony of the putwarry and the witnesses of plaintiff, and no proof having been adduced by defendant, and the ryotts, to establish the deficiency each pleads; nor even an ameen petitioned for a measurement; I disallow this plea also. On the whole, I award to plaintiff a decree in this case, and forty-six more, analogous to it, which were simultaneously tried, for the full amount of claim, and costs of suit, as well as interest to the date of final recovery."

Against this decree, the defendants in fourteen of the suits, instituted appeals, in which they attempt to subvert the reasoning of the moonsiff, and repeat the objections they made to these claims in the first instance.

JUDGMENT.

It is proved that the respondent, in obedience to the orders he had received from the several courts, in which this amount of rents has been the subject of litigation, has now issued the notice enjoined under Sections 9 and 10 of Regulation V. of 1812; and since with reference to the rates at which this village was settled by the collector, the rates now proclaimed and demanded are fair and equitable, there can be no reason to disturb these decisions. I therefore uphold the decrees in all the cases under clause 3, Section 16, Regulation V. of 1831.

ZILLAH SYLHET.

THE 10TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 112 of 1846.

Appeal from Mahomed Moazum, Moonsiff of Nubbeegunge.

Rainbullubh Shah, Appellant,

versus

Sonaton Looee and another, Respondents.

APPELLANT sued to recover, with interest, 15 rupees, lent to respondents.

Respondents denied the loan with several pleas.

The moonsiff dismissed the suit on account of discrepancies in the evidence of appellant's witnesses and on other grounds.

Appellant pleads that his claim is made out, and that the discrepancies noticed by the moonsiff are not sufficient to affect it, with other immaterial matter.

No bond or other document is asserted to have been taken in acknowledgment of the loan: appellant is a merchant, and he admits that the loan is not entered in his account book, and there are discrepancies in the evidence of his witnesses which are detailed in the decree of the moonsiff, and which appear to me to cast suspicion on the reality of the alleged transaction. Under these circumstances, I am constrained to concur in the opinion of the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and that the decree of the moonsiff be affirmed, with costs against appellant.

THE 10TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 115 of 1846.

Appeal from Mahomed Moazum, Moonsiff of Nubbeegunge.

Nedee Ram Das, Appellant,

versus

Pagul Singh, Respondent.

RESPONDENT sued to recover rupees 15, damages for defamation. Appellant denied, and counter charged respondent with abusing him.

The moonsiff, Mahomed Moazum, considered respondent's statement of defamation made out by the evidence of the witnesses, and awarded 5 rupees damages; and concurring with the moonsiff,

IT IS ORDERED,

That the appeal be dismissed, and that the decree of the moonsiff be affirmed with costs against appellant.

THE 11TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 1 of 1846.

Appeal from Molvee Saadut Ali, Officiating Principal Sudder Ameen.

Nusrut Reza, Appellant,

versus

Mofeez Ool Hussun and others, Respondents.

APPELLANT sued to recover Company's rupees 2392-10-8, i. e. 876-7-0, interest to Asarh 1250 B. S., and 1516-3-8, principal of surplus rents of moza kismut Paharpur to the end of 1247 B. S., after clearing both principal and interest of the sums of 1000 and 500 rupees, advanced, under a farming lease, by Abeed Ool Hussun, ancestor of the respondents, on 17th of Kartick, and the 16th Magh 1225 respectively, to Alum Reza, father of appellant; declaring that he had sold the estate in the month of Aghun 1247 to one Nunnee Beebee.

Mofeez Ool Hussun, respondent, answered, in tenor, that, up to the end of 1250, the whole amount of the principal sums advanced by Abeed Ool Hussun, with 1026 rupees interest, was due, and that, on applying to appellant for it, he was told that, under the terms of the second deed executed by Alum Reza, the loss and profit rested with the lessee: and he further objects, that appellant has sued without conjunction with the other heirs of his father.

Appellant in his replication stated that by a decision under Regulation XV. of 1824, he was placed in possession as sole heir of his father's property, which decision has not been reversed.

The officiating principal sudder ameen, Molvee Saadut Ali, observes, in his decree, that the principal sums advanced by Abeed Ool Hussun, with interest thereon, have not been fully repaid; that from the decree of the Sudder Dewanny Adawlut in the suit of Uzhur Alee and others, appellants, *versus* Rai Nowazee Lal, respondent, a similar claim appeared to have been rejected, because the principal sum advanced had not been paid according to the terms voluntarily settled between the parties, with an order that, until repayment of the advance, the estate should remain in the hands of the lessee; that as Alum Reza, father of appellant, voluntarily reckoned 751 kahwans of cowries, as the net profits of the estate, the amount

of mesne profits as calculated by the ameen who had been deputed to ascertain them was unworthy of consideration; that the evidence of the witnesses adduced by Mofeez Ool Hussun, respondent, and the rental papers filed by him, shewed the collections to coincide with the profits quoted in the lease; and he finally dismissed the suit, ordering that the estate should remain in the possession of Mofeez Ool Hussun till the advances were repaid.

Appellant cites Section 10, Regulation XV. 1793, as authorizing his claim, with other matter.

It seems to me that the decree of the Sudder Dewanny Adawlut cited by the officiating principal sudder ameen should not have been held conclusive. It is, I admit, a decision in a case parallel to the present one, but it cannot supersede the law. By whatever name it be called, respondent's tenure is a mortgage with usufructuary possession of the property pledged, and Section 10, Regulation XV. 1793, allows such a mortgagee only such interest as is sanctioned on common bonds, i. e. 12 per cent. per annum, and in the case of Beharee Lal *versus* Musumat Phekoo, decided on the 18th December 1805, and printed in volume I. of the Reports of the Sudder Dewanny Adawlut, it was distinctly and authoritatively decided, that whatever are the stipulations of a deed of mortgage, any excess of the usufruct over the legal rate of interest is applicable to the liquidation of the principal; the decree, therefore, of the officiating principal sudder ameen appears to me illegal, and the case must be remanded for further investigation. The questions for decision were not defined, as they ought to have been, by the late principal sudder ameen, Syyud Abas Alee, under Section 10, Regulation XXVI. 1814, and the collections of the estate have not been ascertained by the late officiating principal sudder ameen, Molvee Saadut Ali, as directed by Section 11, Regulation XV. 1793.

IT IS THEREFORE ORDERED,

That the decree of the principal sudder ameen be reversed: that the case be remanded for further investigation and decision: that the costs of this appeal be eventually charged to the party finally worsted; and that the value of the stamp on which the petition of appeal is written be returned.

THE 17TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 10 of 1846.

Appeal from Kasheenath Biswas, Officiating Moonsiff of Russoolgunge.
Soobede Ram Surmah and Rammohun Surmah, Appellants,

versus

Sheik Fidaye, Respondent.

APPELLANTS sued for 6½ jet 2 pun of land on the northern boundary of the deserted homestead of their late tenant Dengoo-

nath, with mesne profits; alleging dispossession on the 15th Chyt 1245.

Respondent answered that appellants' co-partner, Dhun Ram Surmah, sold him 1 koolba, 2 kear, 2 pao of land in 1240 B. S., furnishing him with a chittah, or detail of the land, witnessed by Soobede Ram Surmah, appellant, in which the land in dispute is included; and he alleged continuous possession from the time of purchase.

Appellants in their reply allege that the land claimed appertains to the share of their father, with other matter.

The officiating moonsiff, Kasheenath Biswas, observed that the evidence of the witnesses was in favor of the party for which each had been adduced, the evidence of those of appellants shewing discrepancies, that the map made by the late moonsiff, Mahomed Salim, on the spot, when compared with the chittah which Soobede Ram, appellant, admitted, before the moonsiff, on the 8th August 1845, to have signed, indicated the land to be in plot No. 16 of the chittah, a fact confirmed by the quantity of land found on measurement by the late moonsiff, and by the existence and position of old bamboos, proving that the outside ditch enclosing them, which is the space claimed, must belong to respondent; and on these and other grounds he dismissed the suit.

Appellants plead in appeal, that their claim is proved, that part of the land in plot Nos. 16 and 17 had been sold to one Rujuboodcen, and that the boundary of the northern side had been excluded from measurement, and that therefore the quantity of land measured in these plots had fallen short of the quantity comprised in the chittah, and that respondent is mundul, or zemindaree servant, of Mahomed Salim, the late moonsiff, with other immaterial matter.

The alleged mismeasurement by Mahomed Salim, the late moonsiff, should have been petitioned against to the officiating moonsiff, Kasheenath Biswas, who himself went and examined the ground under dispute, and the allegation, that respondent is mundul of the former moonsiff, cannot affect the decision of the officiating moonsiff, Kasheenath Biswas, whose decree should in my opinion be upheld on the grounds recorded in it.

§ IT IS THEREFORE ORDERED,

That the appeal be dismissed, and that the decree of the moonsiff be affirmed, with costs against appellants.

THE 18TH NOVEMBER 1846.

PRESENT : H. STAINFORTH, JUDGE.

No. 8 of 1845.

Appeal from Sirinath Bideabagish, Sudder Ameen.

Rajkishwur Deb and Rajnarain Deb, Appellants,

versus

Sadoo Cherrun Shah, Respondent.

RESPONDENT sued as private purchaser of certain lands, assessed at the time of the decennial settlement and subsequently by the imposition of what is called the halabadee assessment, from Toofail Ul Hussun, on the 22nd Kartick 1244, praying to be reinstated in possession of the property purchased by him, from which he alleges dispossession in 1247, and claiming mesne profits.

Rajkishwur's answer sets forth that, after suing Toofail Ul Hussun, for money due, he found that his debtor was about to dispose of his property, and he therefore petitioned the principal sudder ameen to attach it, as was done: that after obtaining a decree he purchased, at the sale in execution, the decennial lands belonging to Toofail Ul Hussun, in the talooka under litigation, and obtained possession: that respondent preferred no claim from the time of attachment to that of the sale: and that the deed of sale has been fabricated and antedated, with other immaterial matter.

Rajnarain's answer supports that of his co-appellant, and represents respondent to have been *surberakar*, or manager, on the part of Toofail Ul Hussun.

Respondent, in his replication, denies that he was manager, as alleged by Rajnarain.

The officiating sudder ameen, Mahomed Salim, dismissed the suit.

On appeal to this court, the case was remanded, and the sudder ameen directed, 1stly, to enquire, by local investigation, who was in possession of the property from the 22nd of Kartick 1244, the date of respondent's alleged purchase, to the date of his dispossession; 2ndly, to call for the deed under which Toofail Ul Hussun himself acquired his title; 3rdly, to ascertain whether respondent had been manager on the part of Toofail Ul Hussun or not; 4thly, to investigate the circumstances under which the assessment, termed the halabadee jumma, had been imposed; and this last enquiry was ordered because appellants, at all events, appeared to have no right to lands, if there were any, for which the halabadee jumma was payable, while the decree of the officiating sudder ameen *de facto* conferred on them those lands, which seemed to belong to respondent.

The sudder ameen, Sirinath Bideabagish, in a judgment of great detail, has recorded that, from the evidence of three of the witnesses who attested respondent's deed of purchase, and of his other witnesses,

the purchase appeared to have been actually made as represented in the deed, and that it was legal under Construction 588, as effected previously to the attachment; and he decreed in favor of respondent, ordering that he should be reinstated in possession of the land, and receive mesne profits from Rajkishwur, the auction purchaser.

Appellants now plead that, when the case was formerly under cognizance of this court, the decree of the officiating sudder ameen, Mahomed Salim, was presumed to be a just one, and that the suit was merely remanded for investigation of four points, which had resulted, in three instances out of four, in their favor; respondent's claim being proved, by the evidence of disinterested witnesses, to be false: that similar evidence has shewn respondent to have been ijarahdar, or lessee, from Toofail Ul Hussun in 1244 B. S., to the date on which they obtained possession: that the deed of sale under which Toofail Ul Hussun acquired his title, in consideration of payment of 700 or 800 rupees, has been fraudulently withheld: that the evidence of Uzmut Oolah, and Sumboonath, witnesses who attested the deed of sale to respondent, shews it to have been executed while the property was under attachment: that respondent's witnesses are dependant on him or persons connected with him, while some are defendants in suits instituted by appellants: that their evidence is discrepant and mere hearsay, and has nevertheless been preferred to the evidence of Uzmut Oollah, Sumboonath, and seven other witnesses, by the sudder ameen, whose decree is represented as founded on supposititious grounds: that Rajnarain's plea, of respondent being manager on the part of Toofail Ul Hussun, was founded on the information of persons living in the neighbourhood of the property under litigation, and that their witnesses' statement, that he was lessee and not manager, shewed that they were not under appellant's influence: that some receipts for rent, dated after the date of respondent's alleged purchase, and filed with the record, exhibited Joogul Kishwur and others, as co-proprietors with respondent, while there is another filed for rent of 1243 B. S., signed by respondent, and thus shewing tenure before the date of his purchase; and they also object to the amount awarded as mesne profits.

There are two principal matters for decision, first, whether respondent's purchase is valid, and secondly, whether the mesne profits have been fairly computed.

No conclusive opinion was, or could have been, given when the case was formerly under appeal before this court. A supposition was certainly hazarded that the opinion of Mahomed Salim, the officiating sudder ameen, might prove to be not without foundation, but nothing was determined, the investigation being deemed incomplete, and the suit was remanded for elucidation of the points detailed above; and, now, after the best consideration which I have been able to bestow on the case, I have come to the conclusion that the alleged

sale to respondent must be upheld, as a real and valid transaction. It is perhaps a somewhat suspicious circumstance that though the property was attached under the provisions of Regulation II. 1806, on the 7th of December 1837, no petition of objection was presented by respondent till the 2d of October 1839, after the auction sale in execution of Rajkishwur's decree had taken place, but respondent meets this difficulty with assertion that he was ignorant both of the attachment and proclamation of sale which he pleads may have been never promulgated, but may be mere paper bye-play, Rajnarain being record keeper in the collectorate, and this plea of ignorance seems favored by the consideration that if, as Rajkishwur, appellant, has alleged in his petition presented under Regulation II. 1806, on the 25th August 1837, Toofail Ul Hussun was, at that time, about to make away with his property in order to defeat their claim against him, it is most improbable that he would have delayed doing so till near the date of respondent's petition of objection, viz. 2d October 1839, as appellant's pleading would lead me to infer, so that the lateness of the period at which respondent's objection was advanced does not, in my opinion, afford sufficient ground for rejecting his claim. Neither can his claim be deemed invalidated either by the receipt for rent of 1243 signed by respondent, or the receipts subsequent to the date of his purchase, signed by Joogulkishwur and others as co-sharers with respondent, for the former proves nothing in favor of appellants, not shewing whether respondent was proprietor,—or lessee, which appellants aver him to have been; and the latter documents are equally inconclusive, for it is not pretended that respondent is purchaser of the whole talooka in which the land claimed is situated. It is not disputed that Adeenath and Dusrut Das are proprietors of the share which originally belonged to Hosein Reza, which is perfectly distinct from the share which Toofail Ul Hussun derived from Mooshtree Beebee: the existence therefore of the signatures of Adeenath and Dusrut for rent, on account of an estate held in joint tenancy, does not make in favor of appellant, and the appearance of the signature of Joogulkishwur, whom respondent declares to have been his gomash-tah, can only be looked upon as fraudulent, for had he been co-sharer and at variance with respondent he would have come forward, and had he not been at variance with respondent, the latter could apparently have had no object in denying his claim. The appearance indeed of Joogulkishwur's name seems to shew that the dakhilas are *bona fide* delivered receipts, and are not fabricated documents. Further, the price alleged to have been paid by respondent does not seem to afford any reason for supposing the sale unreal. It is possible, and, looking at the rate at which the mesne profits are reckoned in the plaint, even probable, that Toofail Ul Hussun may originally have purchased the property, as appellants assert, for 700 or 800 rupees, but it is also possible and probable that, finding it in danger of attachment, he may have been glad to sell it at a sacrifice, and

even for the small sum of rupees 300; and, as I find that the stamp on which the deed of sale is written would have covered a higher price, i. e. 500 rupees, I can only perceive, in the alleged smallness of price, ground for supposing that the sale did actually take place, and I can see no sufficient reason for setting aside the evidence of the five witnesses who have attested the reality of the deed of sale to respondent, on the date, and for the consideration represented in it; and it certainly is not in favor of appellants that, five days after Uzmut Oollah and Sumboonath Surmah had given evidence in favor of respondent, they turned round and stated, in answer to a question by appellant's vaqueel, that the sale took place while the property was under attachment; such a change can only be deemed indicative of fraud on the side of appellants. On the whole then, I feel constrained to uphold respondent's purchase as a true and valid transaction.

With regard to the second point for decision, I may observe that the amount of mesne profits was not disputed in appellant's answers, and that the fairness of the rate, at which they have been allowed, is indicated by appellant's valuation of the property, and is fully borne out by the evidence of witnesses which, under the circumstances stated, I see no reason to distrust.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the sudder ameen affirmed, with costs against appellants.

THE 25TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 103 of 1846.

Appeal from Mahomed Morad, Moonsiff of Hingajeeah.

Mahomed Moosim, Appellant,

versus

Hyder Mahomed, Respondent.

RESPONDENT sued, claiming rupees 8, 13 annas, 1 p. 1 k. being rupees 1, 8 annas half price of a boat, and the balance the amount which he would have gained by it, had it not been taken away by Mahomed Eusuf and Mahomed Asim, his co-purchasers, and by appellant and others.

Appellant, Mahomed Eusuf, and Mahomed Asim denied that respondent had any share in the purchase, declaring that they bought it through Kolye Chokidar, from one Gokul Mistree, for rupees 3-8, and alleging that respondent had it on hire, and that, in consequence of 12 puns of cowrees being due as hire, an altercation took place, which was the only foundation for the present suit.

The moonsiff, Mahomed Morad, deemed respondent's claim proved by the evidence of his witnesses, and of neighbours, while he noticed discrepancies in the evidence of appellant's witnesses, and he decreed in favor of respondent, reducing the amount of hire claimed by him.

Appellant alleges, in appeal, that the moonsiff did not call for the witnesses he had to prove enmity, that his defence is proved, and that the discrepancies in the evidence noticed by the moonsiff are immaterial, while the persons designated by him as neighbours are either connected with respondent or otherwise objectionable.

There are, I find, discrepancies in the evidence of both sides, the weight of probability is in favor of respondent, for no credible ground has been shewn for the institution of this petty suit falsely, but the weight of evidence is in favor of appellant;—the seller, Gokul Mistree, and Kolye chokidar, through whom the boat was bought, having both given evidence against respondent, while the persons, mentioned by the moonsiff as neighbours, were persons present in his court, and were probably, as appellant states, present there on account of the interest they took in respondent's case. Under such circumstances, small as the value of the suit is, I find it impossible to come to a satisfactory conclusion regarding it, and must remand it that its merits be investigated in the village where the parties reside.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and that the suit be remanded for further investigation and decision, that the value of the stamp on which the petition of appeal is written be returned, and that the costs of this appeal be provided for by the moonsiff in his decree.

THE 28TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 100 of 1846.

Appeal from Moulvee Gholam Imam, Moonsiff of Latoo.

Madhoo Das Bishnoo, Appellant,

versus

Sanundram Deb and Hurree Kishen Deb, Respondents.

APPELLANT sued to recover Sicca rupees 29, the unpaid amount of a bond executed by respondents on the 9th Magh 1240, in favor of Ununt Kishwur, a chief of religious mendicants, of whom appellant represents himself to be heir.

Sanundram, respondent, answered that Dhurrum Das and Bishnub Das are the heirs of Ununt Kishwur, and not appellant: that a long while ago, he and Hurree Kishen executed a bond, relating to a

transaction of rice and cash, in favor of Ununt Kishwur, which has been liquidated: and that the present suit has been instituted with a fabricated bond in consequence of respondent and others declining to receive food from the hands of byragees and others.

Appellant, in his replication, observes that Dhurrun Das parted from Ununt Kishwur during the lifetime of the latter, and that Bishnub Das has no claim to inheritance during his (appellant's) life.

The moonsiff, Gholam Imam, observes, that of the witnesses to the bond, Ramgopal has given evidence in favor of appellant, and Lal Mahomed against him, while, though ample opportunity has been allowed for the adduction of the third Nowaz Mahomed, who moreover appeared to be dead, he had not been produced; and he therefore dismissed the suit under Section 15, Regulation III. 1793.

Appellant states that he took Nowaz Mahomed to the moonsiff's cucherry to give evidence, and found that the case had been decided, and he prays further enquiry.

The suit has all the appearance of being a true one, and therefore the moonsiff should, as he could, have given appellant further time for the adduction of Nowaz Mahomed, the fact of whose death rests entirely on the suspicious evidence of Lal Mahomed, and of such other evidence as he is prepared to offer in proof of his being heir of Ununt Kishwur. Under these circumstances.

IT IS ORDERED,

That the decree of the moonsiff be reversed; that the suit be remanded for further investigation and decision; that the value of the stamp on which the petition of appeal is written be returned; and that the costs of this appeal be provided for in the future decree of the moonsiff.

THE 28TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 126 of 1846.

Appeal from Herguwree Bose, Moonsiff of Russoolgunge.

Mahomed Usgur, Appellant.

versus

Saadut Oolah, Respondent.

APPELLANT sued to recover 5 rupees, 8 annas borrowed by respondent, under a deed, dated 10th of Magh 1250, with interest.

Respondent denied borrowing the money, advancing several defensive pleas.

The moonsiff, Hergowree Bose, in his decree, observes that though Ghunnee Mahomed, Sheik Moolaye, and Mahomed Uzeem, attesting witnesses of the deed, have given evidence in favor of appellant's claim, still it is clear that they are persons of low estate, and hacknied witnesses, who have often given testimony in favor of appellant and his relations: that Sirikishun Dhur formerly gave evidence of being the draught man of this deed, and others in suits instituted by appellant's father and brother, under Nos. 2, 3, 4 and 18, and of being employed as a witness in others, and that he therefore appears to be under appellant's influence, and that on these grounds suit No. 4, preferred by Mahomed Nazim, appellant's father, has been dismissed, and that, under all the circumstances, it is probable that the bond has been fabricated though Sirikishun, especially as respondent wrote his signature and the names of other persons in the presence of the moonsiff, a fact exciting strong suspicion, notwithstanding the evidence of witnesses who have sworn that he declared himself unable to write, and on these and other grounds the suit was dismissed.

Appellant now pleads, that his witness, Sheik Moolaye, has not given evidence in any other case on his behalf, that although Gunnee Mahomed has done so in one other case, and Mahomed Uzeem in one or two, still these cases have been decided in conformity with their evidence; and he adds that a merchant's witnesses are generally of those who frequently resort to his residence, with other immaterial matter.

I do not hold appellant's claim proved by the evidence of credible witnesses, such as the law requires: it is replete with circumstances exciting suspicion, and,

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and that the decree of the moonsiff be affirmed, with all costs against appellant.

THE 28TH NOVEMBER 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 134 of 1846.

Appeal from Moonshee Chytun Churrun Das, Moonsiff of Ajmery-gunge.

Asharam Kybert, Appellant,

versus

Kuroona Dibeas, Respondent.

RESPONDENT sued to recover with interest rupees 14-8, borrowed by Hureeram Kybert, on the 27th Poos 1247, on the security of his father, the appellant.

Appellant and Hureeram denied the transaction to have been a cash payment, alleging that the amount in the bond was made up of rupees 12 the price of a pair of bullocks, 2-4 interest in advance, with 4 annas the price of the stamps, and that the bullocks were returned, not answering as plough bullocks, according to agreement, but that the bond was kept under various pretences.

Respondent, in his replication, stated that his brother, Kaleekapershad, had brought a suit against Nundkishwur, &c., and that on this account Nundkishwur and Sunye Das, witnesses to the bond, were disposed to give evidence against him.

The moonsiff, Moonshee Chytun Churrun Das, held the evidence of respondent's witnesses, confirmed as it was by the terms of the bond embodying a cash transaction, and by the circumstance of the bond remaining in respondents' hands, worthy of reliance, rejected the evidence adduced by appellant, and decreed in favor of the claim.

Appellant now repeats his former pleas, and pleads that his property has been fraudulently seized and misappropriated under cover of Regulation II. 1806.

The decree of the moonsiff appears to me to be, on the grounds recorded in it, perfectly just and proper, and if the Regulation II. of 1806 has been abused to appellant's injury, he has his remedy, and the injury cannot affect the result of this suit.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and that the decree of the moonsiff be affirmed, with costs against appellant.

ZILLAH TIPPERAH.

THE 5TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 179 of 1846.

Regular Appeal from a decision of Moolvy Altaf Ali, Moonsiff of Paunchpookriah, dated 26th June 1846.

Suroopchunder Podar, (Plaintiff,) Appellant,

versus

Ramguthee Deo and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 150.

This was a suit for possession, founded on an alleged conditional sale.

The moonsiff decided the case on its merits against the plaintiff; but after recording his decision to that effect, he states that the bill of sale on which the claim rests is written on a stamp of inadequate value, and fines the vakeel by whom it was filed.

As the deed was held to have been engrossed on a stamp of insufficient value, the rule of procedure prescribed by the Sudder Court in their Circular Order No. 179, of the 7th January 1842, should have been followed, the plaintiff either being nonsuited, or allowed a reasonable period for the purpose of having a proper stamp affixed to the document.

The decision of the lower court is therefore reversed: the suit will be restored to its original number on the moonsiff's file, and the course indicated in the above Circular Order followed. The value of the stamp on which the petition of appeal is written will be refunded.

THE 6TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 194 of 1846.

Regular Appeal from a decision of Mahomed Idris, Moonsiff of Begumunge, dated 10th July 1846.

Gopal Kisto Deo, (Defendant,) Appellant,

versus

Musst. Sonamalla and Musst. Kumla, (Plaintiffs,) Respondents.

SUIT laid at Company's rupees 25.

This was an action for restitution of possession on a ryotee holding.

The defendants, of whom only one appealed from the moonsiff's decision, pleaded the sale of the land in dispute, by the plaintiff Sonamalla, to one of the defendants, Kishenjoy, on behalf of his son Gopal Kisto Deo, appellant. The plea was supported by a bill of sale: but of four witnesses to its execution one only was brought to prove it; whereas the occupation of the land, since the year 1246, by the defendant Kishenjoy, as lessee of the plaintiffs, was fully established, both by the evidence of witnesses and by documentary proof. Two witnesses were brought by the defendants to prove that a son-in-law of the plaintiff Sonamalla, had made an offer, on the part of the plaintiffs, to buy back a one-third share of the holding; but this was doubtless a fraudulent attempt to strengthen a weak case. The bill of sale bore the *mark* only of Sonamalla, while the record shewed that she was accustomed to sign her own name.

Every opportunity was afforded the defendants, of causing the attendance of the other witnesses to the bill of sale; but they failed to take any steps in the matter, and the suit was decreed against them.

Nothing new having been advanced in appeal, the decision of the lower court, which is quite unobjectionable, is confirmed. Costs payable by appellant.

THE 7TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 195 of 1846.

Regular Appeal from a decision of Mahomed Amah, Moonsiff of Ameeragaon, dated 18th July 1846.

Khulill Mahomed, (Defendant,) Appellant,

versus

Ramhurry Joogee, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 16.

This was an action for the recovery of the above sum, the value, at the present market price, of 25 maunds of *paddy* deliverable to the plaintiff, by the defendant, in Poos 1252 B. S., in consideration of an advance of 7 rupees, to the latter, by the former.

The defendant denied the account of the transaction as given by the plaintiff. He admitted the receipt of the sum in question; but pleaded that it had been lent on a stipulation that an illegal rate of interest was to be paid for it; and that the plaintiff's story was nothing more than a cover for an attempt to evade the penalty of an infraction of the usury laws. He pleaded further that the debt had been paid.

No written proof of the transaction existed; but the plaintiff's case was proved by the evidence of witnesses, to the satisfaction of

the lower court; while the defendant's witnesses gave a different version of the case from that stated by the defendant himself, declaring that the money had been repaid, with interest, but that the advance had originally been made for *paddy*, as stated by the plaintiff.

Nothing having been advanced by the appellant, to impugn the moonsiff's decision, the decree for the amount sued for is affirmed, and the appeal dismissed with costs.

THE 7TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 200 of 1846.

Regular Appeal from a decision of Rajnarain Mookerjea, Moonsiff of Nassirnugger, dated 21st July 1846.

Chundee Churn Sein, (Plaintiff,) Appellant,

versus

Kasheeram Soote and another, (Defendants,) Respondents.

SUIT laid at Company's rupees 11-9-7-10.

The plaintiff stated that he received a cow and a calf from one Kanooram Mistroc, in liquidation of a debt of rupees 5-8: that having subsequently discovered that in consequence of a blemish, the cow was not worth the sum at which she had been valued, he took the animal back to the party from whom he had received her, with a view to cancel the arrangement: that the defendants, who happened to be present, proposed to take the cow off his hands, agreeing to provide him with another without blemish, within a month; which offer having been accepted, the cow was transferred to the defendants. The defendants having, it was alleged, failed to perform their part of the contract, an action was brought for the value of the cow, and also of the milk which plaintiff would have received had the contract been fulfilled.

The defendants denied the transaction *in toto*, and pleaded that the suit was the result of a conspiracy on the part of the plaintiff and Kanooram, to obtain for the former a portion of certain property, made over to them (defendants) by Kanooram, in satisfaction of a claim against him of rupees 43, Kanooram being insolvent, and unable to liquidate his debt to plaintiff.

In support of their plea, the defendants produced the deed under which the transfer of Kanooram's property, to them, took place; and proved it by the evidence of two witnesses.

The plaintiff brought witnesses to establish his claim; but the only one among them who deposed to a personal knowledge of the facts, was his debtor Kanooram. The evidence of the others was

only hearsay, the plaintiff and Kanooram being the parties from whom they had heard all they knew.

The suit was very properly dismissed by the lower court.

Nothing in any way calculated to alter the features of the case is advanced in appeal. Stress is laid on the circumstance that two witnesses named by both parties, were not examined; but the fault lay with appellant himself, who failed in causing their attendance; and their evidence, had they been examined, would not have affected the result of the suit. The appeal is dismissed with costs.

THE 9TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 197 of 1846.

Regular Appeal from a decision of Moolvee Imdad Ali, Suddler Moonsiff, dated 18th July 1846.

Beenoodram Podar, (Plaintiff,) Appellant,

versus

Panchoo Gazee and Dagun Gazee, (Defendants,) Respondents.

SUIT laid at Company's rupees 37-13-3.

This was an action to set aside a summary award under Regulation V. of 1812.

Plaintiff is a farmer, and the defendant Panchoo Gazee a ryot: the defendant Dagun is plaintiff's gomashtha, but was made a defendant as being in collusion with Panchoo.

The rent payable by Panchoo to plaintiff, for the year 1253 B. S., both parties admit to have amounted to Company's rupees 64-6-6. The point for decision was whether the whole of that sum, or only a portion of it, had been paid; and the case hinged on the validity or otherwise of two receipts for rent; one for Company's rupees 29-4, the other for Company's rupees 12-5-6.

Both these receipts were received as genuine, as well in the moonsiff's, as in the revenue court; but one is evidently a forgery, viz. that for Company's rupees 12-5-6; in the other, granted originally for Company's rupees 9-4, the figures and the total *in writing* have been altered, so as to make the document pass for a receipt for Company's rupees 29-4, but in so clumsy a manner, that it is difficult to understand how it could have been admitted as evidence in any suit.

There are in all three receipts. Of these, one for Company's rupees 22-12 is allowed to be genuine.—The second is that in which the alterations have been made; the figures added to it, are in a different ink from the rest of the figures and the writing, and are not in the position in which they would have stood had they

been written at the same time as the receipt itself. The *total* in figures now appears as Company's rupees 29-4, and the *total in writing* has been so far altered that the words which expressed the original sum of Company's rupees 9-4, have been converted into words expressing the sum of Company's rupees 29; but the manner in which the *total* was originally worded not allowing of the addition of the 4 *annas* to the words *twenty-nine*, the total in writing now differs from the total in figures; and the alteration in the former is too manifest to escape detection, even on the most summary examination of the document. The third receipt is, doubtless, a forgery; the paper on which it is written, and the signatures which it bears, being quite different from the paper and signatures of the receipts admitted to be genuine in whole or in part.

The award of the revenue authorities, under which certain property belonging to the defendant Panchoo was released from attachment, on the grounds that the receipts for Company's rupees 29-4, and Company's rupees 12-5-6, were genuine, is reversed. The decision of the moonsiff is also reversed; and a decree will issue in favor of the plaintiff, against the defendant Panchoo, for the amount sued for, which includes interest from the date of the summary award. Costs payable by the respondent (defendant) Panchoo, the respondent Dagon being exonerated from all liability.

THE 9TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 201 of 1846.

Regular Appeal from a decision of Deenobundo Choudry, Moonsiff of Toobkibagrah, dated 20th July 1846.

Raj Kishen Sein, (Plaintiff), Appellant,

versus

Juggut Eshree, widow of Rammohun Deo and guardian of Ram Coomar Deo, a minor, (Defendant,) Respondent.

SUIT laid at Company's rupees 30-13-1-4.

This was an action for the recovery of a bond debt, with interest.

The bond was filed by the plaintiff, and its execution, by the defendant's husband, proved by three witnesses.

The defendant denied the transaction, and pleaded, first, that the plaintiff was actuated by enmity, arising out of the refusal of her deceased husband to become his ryot; and by a desire to involve her in difficulties, thereby to obtain his object of inducing her to acknowledge that she was his slave—secondly, that she was not liable for her husband's debts, his entire property having been sold

to defray the expenses attending his funeral obsequies. Every opportunity was afforded her of adducing evidence in support of her plea, but she failed in producing any; and in appeal, she did not appear. It was proved by the plaintiff's witnesses that she succeeded to the property of her husband.

The moonsiff dismissed the suit on grounds altogether insufficient; raising objections to the evidence on immaterial points, and alleging that succession to the estate was not fully proved.

The plaintiff having proved his case to the satisfaction of this court, and the defendant having adduced no evidence whatever, in the lower court, in proof of her pleas, and having further neglected to appear in appeal, the moonsiff's judgment is reversed, and the appeal decreed, with costs, against respondent.

THE 10TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 202 of 1846.

Regular Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Cushba Noornugger, dated 21st July 1846.

Rajoomallee, (Defendant,) Appellant,

versus

Punchanund Ghose, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 4.

This suit was brought to recover the value of 6 arees (14 maunds 16 seers) of paddy, advanced to the defendant by the plaintiff, upwards of eleven years prior to date of suit, and returnable, with interest, in Aghun 1244, Tipperah, seven months after the date of the transaction. The appellant's mother was also named as a defendant, but was exonerated from liability by the moonsiff, although she did not appear.

The defendant denied the transaction and pleaded that the plaintiff was actuated by malice in consequence of his (defendant's) having refused to cultivate land in the plaintiff's talook; and because he (defendant) was about to bring an action against plaintiff to contest a summary award under Regulation V. of 1812, in which the parties were concerned. He pleaded further, that he was not a resident of the village in which the transaction was said to have taken place, at the period named.

The plaintiff proved his case by the evidence of three witnesses, and named several others. The defendant brought two witnesses to establish his last plea, viz., that he resided in a different village from the one named; but the evidence was by no means such as to establish it.

The plea of enmity was not attempted to be proved. Nothing new was advanced in appeal.

Notwithstanding the lapse of so long a period, and the absence of documentary evidence of any kind, the moonsiff gave a decree in favor of the plaintiff, but only for a sum equal to the present market price of the *paddy*, with interest from date of decree.

The principle on which the amount decreed was calculated, is wrong. If a decree was given at all, it ought to have included interest from the date on which the advance was returnable; and the market price at that period ought to have been taken as the principal sum to be awarded. No appeal, however, having been preferred by the plaintiff, no reason exists for modifying this part of the decision. After a careful perusal of the record, I am satisfied that the transaction, as stated by the plaintiff, did take place. The internal evidence adducible from the nature of the defendant's pleas, is strongly confirmatory of the correctness of the view of the case taken by the moonsiff on that point; and no one of the defendant's pleas, such as they are, has been established. The appeal is therefore dismissed with costs.

THE 10TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 200 of 1846.

Regular Appeal from a decision of Moolvee Imdad Ali, Sudder Moonsiff, dated 20th July 1846.

Dariah Gazee and Mahomed Ruzeeooddeen, (Plaintiffs),
Appellants,

versus

Helall Gazee, Teeta Gazee, and Aboo Mahomed, (Defendants),
Respondents.

SUIT laid at Company's rupees 82-8.

This was a suit to set aside a summary award under Regulation VII. of 1799, by which the claim of the plaintiffs to rent, at the rate of Company's rupees 85-8, per annum, for droons 2-15 of land in the occupation of the defendants, was dismissed.

The plaintiffs are under-farmers in pergunnah Mehercool, in the zemindarree of the rajah of Tipperah. The defendants are resident cultivators in the same pergunnah.

The claim was founded on a cuboolyat (counterpart lease,) which the plaintiffs averred had been executed in their favor by the defendants, on the 15th Aghun 1254 Tipperah.

The defendants pleaded occupation since Assin 1239 Tipperah, at a fixed rent of Sicca rupees 28, in virtue of a *chittee* or lease, granted by the rajah, in favor of the defendant Helall Gazee.

One of four witnesses brought by the plaintiffs to prove the execution of the cuboolyat in their favor, having denied that he had been present, or had affixed his signature to the document; and there being discrepancies and contradictions in the testimony of the other three witnesses; the claim for rent, at the rate demanded by the plaintiffs, was dismissed by the revenue authorities.

In the moonsiff's court, the two remaining witnesses named on the cuboolyat, were examined; but on cross examination, they contradicted the evidence adduced before the deputy collector; and it was discovered that, although one of the defendants was able to write, the cuboolyat only purports to bear his *mark*. The plaintiffs filed unauthenticated copies of village papers, to shew that the rent of the land in the defendants' occupation had varied subsequently to the date of the chittee; but having failed in proving execution of the cuboolyat, this circumstance availed them nothing.

The defendants, in the lower court, filed the original *chittee*, and, by receipts, proved that they had hitherto paid rent at the rate therein named.

The decisions, both of the revenue and moonsiff's courts, having been passed in strict accordance with the rules for such cases, and there being no reason whatever to impugn their equity, they are hereby affirmed. Costs payable by appellants.

THE 11TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 204 of 1846.

Regular Appeal from a decision of Moonshee Rehmutoolla, Moonsiff of Juggernathdiggy, dated 24th July 1846.

Mussumaut Kooronamai and Kumlakanth Rai, (Plaintiffs,) Appellants,

versus

Mussumaut Kootubonissah, Goluck Chunder Rai, and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 241-6-10-9.

This was a suit for restitution of possession, with mesne profits, on a 1 a. 13 g. 1 c. 1 kt. share of a 5 a. 6 g. 2 c. 2 kt. share of mouzahs Katullia and Simrah, a joint undivided zemindaree, from which the plaintiffs alleged they had been forcibly dispossessed by the defendants, on the strength of the latter having succeeded to the rights and interests of one Hurnarain Rai, in the zemindaree, by auction purchase, at a sale held in execution of a decree of court.

The plaintiffs were nonsuited in the lower court, because the whole of the proprietors of the zemindaree did not appear as parties to the suit (either as plaintiffs or defendants), and because the

plaint did not specify the period from which, until dis-seized by the defendants, the plaintiffs had been in possession, or how, or under what circumstances, they became possessed of any right or interest in the estate, whether by descent, purchase, or otherwise.

In their *reply*, the plaintiffs made an attempt to remedy the defect ; but their arguments were limited to the fact of possession, in proof of which they filed copies of two petitions presented to the collector of the district, for the registry of their names as joint proprietors of the estate, to the extent now claimed, to which petitions another of the proprietors had been a party, and a few other exhibits. It appeared, however, that the registry cases had been struck off on default ; and the other proofs, in themselves insufficient to prove possession, in no degree supplied the defects in the plaint.

The reasons for the nonsuit, as given by the moonsiff, being sufficient, and nothing new having been advanced in appeal, the decision is affirmed, with costs.

THE 11TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 205 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Idris, Moonsiff of Begumgunge, dated 22nd July 1846.

Tokanee, (Plaintiff,) Appellant,

versus

Waris and others, (Defendants,) Respondents.

Suit laid at Company's rupees 12.

No. 206 of 1846.

Tokanee, (Defendant,) Appellant,

versus

Waris, (Plaintiff,) Respondent.

Suit laid at Company's rupees 8. .

THESE are cross suits for the value of standing crops forcibly cut by the opposing parties ; but, in reality, they involve, though they were not ostensibly brought to try, the right of possession.

The parties (the principals at least) are joint proprietors of a petty subordinate talook in the Bulloah zemindaree, but claim a right to hold particular and separate lands, under a private and mutual act of partition.

In case No. 206, the moonsiff gave a decree for the plaintiffs ; and having so done, he necessarily dismissed the other. The grounds of his decision in the latter, are—contradictions in the evidence, and the circumstance that the witnesses do not reside in the village in which the lands are situated. In both cases, however, there is as much and as good evidence for the one party

as for the other; and it is confined, exclusively, to the testimony of persons who, from their situation in life, and from the mere fact of their appearing as witnesses in two such cases, are unworthy of credit.

The real question at issue being the right of the opposing parties to occupy particular lands, they ought to have brought actions for possession. The decisions of the lower court are therefore reversed, and the plaintiffs in each case nonsuited. Costs payable by the parties respectively.

A copy of this judgment will be filed with the record of case No. 206.

THE 16TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 207 of 1846.

Regular Appeal from a decision of Deenobundhoo Chowdry, Moonsiff of Toobkibagrah, dated 29th July 1846.

Arman Ghazee, (Plaintiff,) Appellant,

versus

Kameezooddeen and Himmud Ali, (Defendants,) Respondents.

SUIT laid at Company's rupees 34-8.

This was an action for damages, for withholding receipts for rent.

Plaintiff is a ryot—the defendants are under-farmers. Of the latter, Kameezooddeen alone appeared to defend the suit, either in the lower court, or in appeal.

Plaintiff states that the rent of the land in his occupation is rupees 13, of which rupees 10 had been paid when the defendants met him at the house of one Tumeezooddeen, and forced him to pay not only the balance of rupees 3, but rupees 9-8, in excess—the latter sum being advanced by Tumeezooddeen. He files a pottah or lease in which the rent is stated to be rupees 13, and brings witnesses to prove his case.

The defendant, Kameezooddeen, denies having taken or received the money; and pleads that, being about to institute a suit against the plaintiff for rent, on another account, the present suit was got up for the purpose of causing suspicion to attach to that claim: he adds that, on the date in question, he was not in that part of the country. He took out process for his witnesses, but failed in causing their attendance.

The moonsiff dismissed the suit, on the grounds of certain discrepancies in the evidence of the witnesses; and, because the witnesses, instead of being, as was to have been expected, neighbours of the party at whose house the transaction is said to have taken place, are residents of distant villages, and declare themselves to have been casually passing by, and attracted to the spot

by the altercation between the parties. With this decision I see no reason to interfere. The plaintiff's statement is a very improbable one. It is not credible either that he would have acceded to the illegal demand of the defendants so readily and with so little opposition as he would have it appear, or, that the witness Tumeezooddeen with whom he would not seem, by the evidence, to have been very intimate, would have come forward with a sum of rupees 9-8 on such an occasion, so freely, and without requiring a written acknowledgment from the plaintiff. The appeal is dismissed with costs.

THE 17TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 210 of 1846.

Regular Appeal from a decision of Mahomed Amah, Moonsiff of Ameeragaon, dated 28th July 1846.

Musst. Sreemutee, (Plaintiff,) Appellant,
versus

Neelkaunth Pundit, (Defendant,) Respondent.

Suit laid at Company's rupees 64.

This was an action for compensation in damages, for defamation, by oral slander.

The slander complained of, was alleged to have been uttered by the defendant, in the shape of certain abusive epithets addressed to the plaintiff, in a quarrel between the parties, arising out of a claim advanced by the plaintiff to a share of the perquisites received by the defendant as officiating priest at the funeral obsequies at the house of a third party.

The suit was dismissed by the lower court, first, on the ground that the plaintiff was actuated by malice, in consequence of her claim to a share of the priest's perquisites not having been admitted by the defendant, and secondly, because the presence of the plaintiff at the funeral obsequies, and her entering into, a quarrel with the defendant on such a public occasion, deprived her of any claim to damages.

With regard to the first of these reasons, the moonsiff's view of the case is doubtless correct, under the circumstances; and, as the evidence is of too contradictory a nature to be acted on, the decision, so far as relates to the order for the dismissal of the suit, will be affirmed. But the second reason is not valid, and involves a principle opposed to law and justice, a principle which would bar redress in suits brought by females for defamation, unless they lived in absolute seclusion.

With this modification, the decision of the moonsiff is affirmed, and the appeal dismissed with costs.

THE 18TH NOVEMBER 1846.

PRESENT : T. BRUCE, JUDGE.

No. 232 of 1846.

Regular Appeal from a decision of Moolvy Altaf Ali, Moonsiff of Pauchpookriah, dated 3rd September 1846.

Kishto Shaha, (Defendant,) Appellant,

versus

Dookheeram Shaha, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 30-13-6-2.

This was an action of debt, for the recovery of Company's rupees 22, the balance of a sum of Company's rupees 25 lent to the defendant by the plaintiff, on the 10th Kartick 1250 B. S., in the presence of witnesses, but without the execution of any bond or other obligation, with interest.

There were three defendants, viz. the appellant and his two brothers—but the latter were merely made defendants as living with their brother in family coparcenary, and a decree having issued only against the principal, the others did not appear in appeal.

The contract was denied by the defendants. They pleaded previous enmity on the part of the plaintiff, and the improbability of the money having been lent without a bond; but the plea was not supported by any evidence.

The plaintiff's case was clearly established on the testimony of unexceptionable witnesses; the evidence not being limited to the fact of the original transaction alone, but proving that payment of the debt was withheld by the appellant, on the ground that as his brothers lived with him in family coparcenary, they were liable as well as himself.

The debt having been incurred by the appellant alone, his brothers were not included in the decree passed by the lower court in favor of the plaintiff.

Nothing new having been advanced in appeal, and the moonsiff's decision being quite unobjectionable, the appeal is dismissed.

The respondent having appeared without being summoned, he will pay his own costs.

THE 18TH NOVEMBER 1846.

PRESENT : T. BRUCE, JUDGE.

No. 236 of 1846.

Regular Appeal from a decision of Goopeenath Moetro, Moonsiff of Soodharam, dated 4th September 1846.

Doola Gaze, (Plaintiff,) Appellant,

versus

Panchoo Teerundaz and others, (Defendants,) Respondents.

Suit laid at Company's rupees 25.

No. 237 of 1846. •

Ramdhun Paul, (Plaintiff,) Appellant,

versus

Panchoo Teerundaz and others, (Defendants,) Respondents.

Suit laid at Company's rupees 11-11.

No. 238 of 1846.

Fukeer Mahomed, (Plaintiff,) Appellant,

versus

Panchoo Teerundaz and others, (Defendants,) Respondents.

Suit laid at Company's rupees 4.

THESE suits were brought to cancel cuboolyats (counterpart leases) executed under duress.

The defendants were the same in all the three cases, and judgment was passed in all on the same date.

After an investigation on their merits, the suits were decided in favor of the plaintiffs, and the cuboolyats cancelled: but costs were made payable by the plaintiffs and defendants respectively, without the reasons for such an unusual course of procedure being assigned.

The plaintiffs appeal against that part of the decisions which makes them liable for their own costs.

It being irregular not to explain the cause of such a distribution of costs in suits decided in favor of the plaintiff, the decisions of the lower court must be held to be incomplete. They are therefore reversed, and the suits remanded in order that the defect may be remedied.

The value of the stamps on which the petitions of appeal are engrossed, will be refunded.

Copies of this judgment will be filed with the records of cases No. 237 and 238.

THE 19TH NOVEMBER 1846.

PRESENT: T. BRUCE, JUDGE.

No. 15 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 3rd December 1845.

Mahomed Wasil and others, *paupers*, (Defendants,) Appellants,

versus

Mahomed Rumzan and others, *paupers*, (Plaintiffs,) Respondents.

SUIT laid at Company's rupees 3218-12-6.

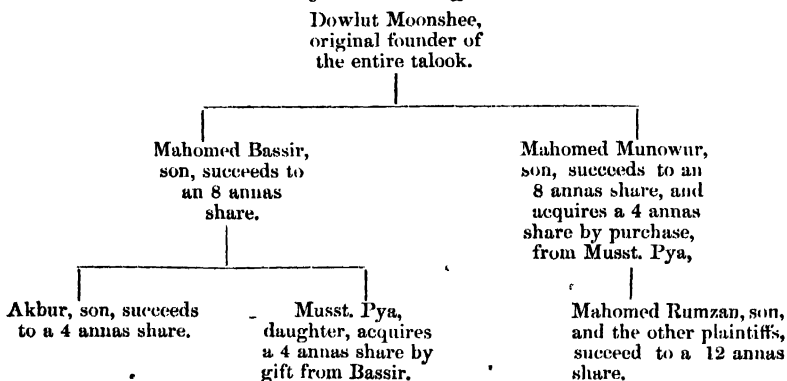
This was a suit for possession of a 12 annas share of talook mouzah Dowlut Ramdhee, a subordinate tenure in the Bullooah zemindaree—with mesne profits from Assin 1248 B. S.

In consequence of disputes between the parties, and the inability of the criminal authorities to satisfy themselves as to which party was in possession, the land was attached in Poos 1248 B. S., under the provisions of Section 3, Act IV. of 1840.

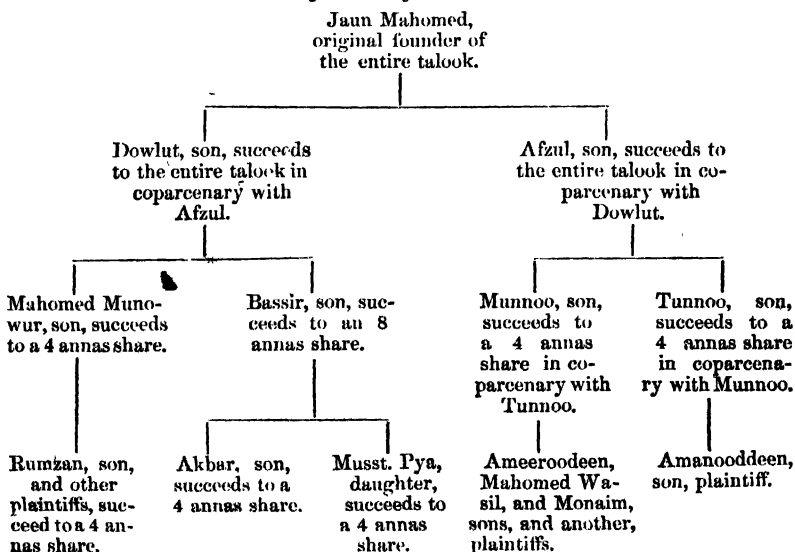
The plaintiffs sue as heirs of Mahomed Munowur, father of the plaintiff Rumzan, and last sole proprietor. The defendants plead their right to a third of the same 12 annas share, as heirs of Munnoo and Tunnoo, by whom, on the demise of their father Afzul, it was enjoyed in coparcenary.

The following tables give the history of the talook as stated by both parties, together with their respective claims.

By the Plaintiffs.



By the Defendants.



The plaintiffs therefore claim an 8 *annas* share of the entire talook, by descent, as heirs of Mahomed Munowur, one of the two sons of Dowlut Moonshee, the original founder of the talook—and a 4 *annas* share, as heirs of the same Mahomed Munowur, by whom it was acquired by purchase in 1224 B. S.; from Musst. Pya, daughter of his brother Bassir. The remaining 4 *annas* they state to be in the possession of Akbur—as also do the defendants.

The defendants claim a 4 *annas* share of the entire talook, or a third of the 12 *annas* share, by inheritance, as heirs of Munnoo and Tunnoo, sons of Afzul, one of the two sons of Jaun Mahomed, who, they allege, was the original founder of the talook. They state that, on the death of Jaun Mahomed, the talook was held in coparcenary by his two sons Dowlut and Afzul, but by what law of inheritance, or under what circumstances, Mahomed Munowur, one of Dowlut's sons, succeeded to a 4 *annas* share only, while his brother Bassir succeeded to an 8 *annas* share,—or how the two sons of Afzul obtained a 4 *annas* share only, and the two sons of Dowlut a 12 *annas* share, they do not explain. In the lower court, in all their pleadings, they stated that Dowlut and Afzul were the original founders of the talook—Jaun Mahomed was first named in appeal.

The principal sudder ameen gave a decree for the plaintiffs, but, apparently, after a very summary investigation, and without examining the documentary evidence at all. Although this evidence is of the most important character, strongly confirmatory of the correctness of the view of the case taken by the principal sudder ameen, and bearing out the plaintiffs in their statement, even in the most minute particulars, he disposes of it by the single remark that it establishes the claim of neither party. He grounds his decision on the evidence of the plaintiffs' witnesses, that, as stated by the plaintiffs, the talook was founded by Dowlut, and the admission, by others, that, although now known as talook Mahomed Munowur, it is designated also "Modafat" or *late* talook Dowlut Moonshee, which designation, the principal sudder ameen maintains, establishes the fact of Dowlut Moonshee having been the founder.

With these reasons, so far as they go, no fault is to be found. The conclusion at which the principal sudder ameen arrives, in regard to the designation "Modafat Dowlut Moonshee," is no doubt correct. In this part of the country, the expression is the best circumstantial evidence that could be afforded, of the talook having been founded by Dowlut.

Of the exhibits put in by the plaintiffs, the following are the most important.

1. Copy of a decree of the zillah court, dated 1795, giving possession of the talook to Mahomed Munowur, father of Mahomed Rumzan, one of the plaintiffs in the present suit.

2. Copy of a decree of the sudder ameen's court, dated 1822, awarding a 4 annas share of the talook to Akbur, in virtue of his right by descent.

3. Copies of two receipts for the rent of the talook, given by the then zemindar to Mahomed Munowur, dated 1204 and 1218 B. S.

4. Bill of sale for a 4 annas share of the talook, executed by Musst. Pya in favor of Mahomed Munowur, dated 1224 B. S.

5. Copies of putwarry papers of 1232 B. S., filed in the collector's office by the then zemindar, shewing the talook to be in possession of Mahomed Munowur.

6. A notice to the plaintiffs as former occupants of the talook, calling upon them to enter into new engagements for the rent with the auction purchasers of the zemindaree, dated 1246 B. S.

7. Lease granted by the auction purchasers of the zemindaree, to the plaintiffs, dated 1246.

8. Copy of a decree of the zillah court, dated 1841, giving possession of a 4 annas share of the talook to Akbur.

The defendants file copies of two decisions in summary suits for possession of small portions of the talook, dismissing the claim of Mahomed Munowur,—he being plaintiff, and the defendants' ancestors, defendants. They also put in copies of the petitions of plaint, of some of the pleadings, and of the deposition of a witness, in those suits, but they adduce nothing in any way calculated to establish their plea.

Both parties file a few ryotee cuboolyats (counterpart leases;) and the appellants, when the appeal was brought to a final hearing, put in copy of a decision of the moonsiff of Soodharam, dated 3rd December 1845, from which it appeared that in a suit for rent, brought by Akbur against the appellants as jotedars or cultivators, the appellants had pleaded occupancy as proprietors of the 4 annas share which they now claim. The suit was dismissed because the right to the land was disputed; but even had it been otherwise, and a decree for rent issued, the appellant's case would not thereby have been strengthened; for the suit was instituted after the appellants had pleaded in the present action, and collusion would necessarily have been inferred.

The plaintiffs having fully established their case, and the defendants having as completely failed in proving theirs, the appeal is dismissed, with all costs, and the decision of the lower court awarding possession, together with the amount rents collected during the period of attachment, to the plaintiffs, affirmed.

ZILLAH TIRHOOT.

THE 27TH NOVEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 226 of 1845.

Regular Appeal from the decision of Syud Ushruf Hossein Khan, Additional Principal Sudder Ameen, passed on the 17th March 1845.

Gopaul Lall Mooshtere, (Plaintiff,) Appellant,

versus

Goolam Hossein Bhye and others, (Defendants,) Respondents.

CLAIM, foreclosure of a mortgage.

On perusal of the papers in this case it appearing that the suit had been dismissed in the lower court on account of neglect of the plaintiff in proceeding in his suit under Act XXIX. of 1841, and it being expressly enacted in Section 3 of that Act, that no regular appeal shall lie against such decision, it is accordingly

ORDERED,

That this appeal be dismissed, and that the cost thereof be defrayed by the appellant.

THE 27TH NOVEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 180.

Regular Appeal from a decision of Syud Ushruf Hossein Khan, Additional Principal Sudder Ameen, passed on the 11th Feb. 1845.

Seebun Rai, guardian of Kumloo Rai, minor son of Kunhya Rai, deceased, (Defendant,) Appellant,

versus

Doolub Thackur, Mokoond Doss, and others, (Plaintiffs,) Respondents.

THIS suit was instituted, by the respondents, to annul a pottah dated the 19th of Magh 1246 F. S., 18th January 1839, alleged to have been granted to Kunhya Rai, deceased, father of the minor, by Sodasib Lall, one of the defendants, and to obtain possession of 2 annas, 6 gundahs, 1 cowry, 3 dunts of the village of Kishenpore Muneearree, purgunnah Bissarah, also to obtain mesne profits of the above from 1249 to 1251 Fuslee; total claim laid at Company's rupees 1332-7-9.

The plaintiffs set forth that they bought the above share for Sicca rupees 7001, from the former proprietor Sodasib Lall, on the 15th

October 1840, 4th Kartick 1248 F. S., and that the deed of sale was duly registered; that owing to some dispute they were obliged to bring their action for possession, which they did in 1841, and obtained a decree for possession in the second principal sudder ameen's court dated 5th February 1842; that in executing the said decree they got possession of part of the above mentioned property, i. e. most of the ryots gave agreements or muchulkas and paid part of the rents; that after this the defendants brought forward the false pottah for 2 annas, 6 gundas, 1 cowry, 3 dunts, from 1246 to 1255, said to have been granted by the former proprietor Sodasib Lall to Kunhya Lall, deceased, on receiving 500 rupees in advance; that this dispute came to be decided in a summary suit before the second principal sudder ameen, who, although the granting of the pottah was denied by the former proprietor, thinking it improper to reverse such a pottah in a miscellaneous suit, ordered them to bring a regular action for its annulment and kept the other party in possession; they therefore bring the present action to annul the above-mentioned pottah, and also to obtain possession of their share and mesne profits for the same. They also allege that as the defendants, Mohunt Kurta Ram and Rampershad Doss, are the real fabricators of the false pottah in the name of Kunhya Rai, deceased, a creature and servant of theirs, they have also included them in their action as well as the former proprietor of the property, as the pottah is alleged to have been granted by him. The plaintiffs in conclusion observe that the false pottah is not worthy of consideration as it is denied by the granter thereof, and neither registered nor attested by the seal of the cauzee; also that no objection was made on the ground of the pottah when they first brought their action for possession.

The answer of the defendant, Seebun Rai, on the part of the minor, asserts that the pottah is a true and good one, and that the minor and his deceased father Kunhya Rai were respectable people of substance, and quite able to make advances and conduct affairs for themselves, and that they were not aware of the sale of the above property having been effected by Sodasib Lall: as for the non-registry and non-affixment of the seal of the kazee, he is not aware of their being legally requisite. The answer of the defendants Mohunt Kurta Ram and Rampershad, who appeal from the same decision in another number, and are the proprietors of the remaining shares of the village of Kishenpore, alleges that they have nothing to do with the suit and that the plaintiffs have wrongfully and illegally included them in their action, and that they therefore pray to be released from the same, and denies that they have any concern whatever with Seebun Rai, or Kunhya Rai, deceased, who are the real defendants in the action, or that they know any thing of the pottah.

The answer of Sodasib Lall, defendant, who does not appeal from the decision of the lower court, acknowledges the claim of the

plaintiffs, and denies ever having granted a pottah to the deceased Kunhya Rai.

The lower court observes that the main point to be decided in this suit is the genuineness, or otherwise, of the pottah alleged to have been granted by the former proprietor of the property in favor of Kunhya Rai, deceased. It finds the genuineness of the pottah not proven, owing to the suspicious nature of the document, and the death of three of the principal witnesses thereto, and the strong denial of the granter. With respect to the other point, the amount of mesne profits—on an inspection of the putwarie's village accounts the lower court finds that less than the sum claimed is due, and accordingly awards to the plaintiffs the sum of Company's rupees 433-7 only on that account, and declares the pottah null and void. It releases the defendant Sodasib Lall from all claim, but finds the two defendants Mohunt Kurta Ram and Ram Pershad liable, along with the other defendants, for the sum awarded as costs.

From this decision there are three appeals, one brought by the present appellant, another brought by the plaintiffs No. 130, and a third by the two defendants Kurta Ram and Ram Pershad No. 179.

After a careful perusal of the proceedings in the case and consideration of the circumstances of the claim, which I consider clearly and satisfactorily established, there not appearing any good grounds for interference with the decree of the lower court as far as regards the main points, I confirm the same, with the exception of the costs awarded, which by a mistake of the lower court were rated at the amount claimed and not at that awarded, and which ought to have been rupees 99-8; it is therefore ordered that costs to that amount only be decreed.

THE 27TH NOVEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 130.

Regular Appeal from the decision of Syud Ushruf Hosein, Additional Principal Sudder Ameen, passed on the 11th February 1845.

Doolub Thackoor, Muckund Doss, and others, (Plaintiffs,) Appellants,

versus

Seebun Rai, guardian of Kumloo Rai, minor son of Kunhya Rai, deceased, Mohunt Kurta Ram, Ram Pershad, and Sodasib Lal, (Defendants,) Respondents.

THIS appeal is from the same decision, the particulars of which are fully entered into in the above case No. 180.

The appellants are dissatisfied with the amount of mesne profits awarded them by the lower court, and again reiterate their claim

in this appeal. They allege that the village accounts on which the additional principal sudder ameen decided the amount were fabricated and got up by the defendants. On inspection however of the papers and accounts filed with the case, there does not appear any grounds whatever for the above allegation, and as the decision of the lower court has been already confirmed, it is therefore ordered, that this appeal be dismissed with costs.

THE 27TH NOVEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 179.

Regular Appeal from the decision of Syud Ushruf Hosein Khan, Additional Principal Sudder Ameen, passed on the 11th Feb. 1845.

Mohunt Kurta Ram and Ram Pershad Doss, (Defendants,) Appellants,

versus

Doolub Thackoor and others, (Plaintiffs,) Respondents.

THIS appeal is also from the same decision, the particulars of which are fully entered into in the case No. 180.

In this case the appellants reiterate their former defence, viz., that they have nothing to do with the claim, and that the respondents have wrongfully and illegally included them in their action, they therefore pray to be released from all liability on account of the same. It appears however from the records in the case that the appellants are the proprietors of the remaining shares of the village of Kishenpore, and that on hearing of the sale of the share to the respondents they had instituted a suit claiming right of pre-emption by huk-e-shuffeh, which on being dismissed they assisted in getting up the false pottah. It also appears in evidence that Kunhya Rai, the person in whose name the pottah was granted, was a creature and disciple or chela of the mohunt. I have therefore no doubt of the liability of the appellants, and order accordingly that this appeal be also dismissed with costs.

THE 28TH NOVEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 519.

Regular Appeal from the decision of Syud Ushruf Hosein Khan, Additional Principal Sudder Ameen, passed on the 8th July 1846.

Musst. Rameshur Kowur and Musst. Kurnphool Kowur, (Defendants,) Appellants,

versus

Durbaree Lal, and others, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents, on the 19th April 1845, to recover from the appellants the sum of Company's rupees

3,261-9-4, due under a bond bearing date 15th Kartick 1245 Fuslee, 28th October 1837.

The respondents are members or heirs of members of a banking house. The appellants are the widows of Baboo Jugdeonarain Singh, the mother and stepmother of his two sons, minors, Koula Purshad and Luchmee Purshad, and at present in possession of the estate of their deceased husband. The plaint sets forth that on the above date Baboo Jugdeonarain Singh, the father of the minors, borrowed from the plaintiffs the sum of Sicca rupees 1,615, for which he executed a bond dated the 15th Kartick 1245 Fuslee, 28th October 1837, payable in one month, but notwithstanding the elapse of the stipulated period the bond has not yet been liquidated. That in the interim the original borrower, Jugdeonarain, having died, they therefore sue his heirs, who are in possession of the property, for the amount of the bond, with principal and interest.

The appellants did not appear in the lower court, and the case was consequently tried *ex parte*.

The execution of the bond and the payment of the sum for which it was granted having been duly proved, the additional principal sudder ameen passed a decree in favor of the plaintiffs against the estate of the deceased, Jugdeonarain Singh, for the whole amount claimed.

In appeal it was urged that the claim was groundless and the evidence in support thereof false; that the widows were not the guardians of the minors and had nothing to do with the estate; and that the notices required by law had not been duly served on them.

In this court it appears from an examination of the papers in the case that the legal notices had been duly served, and that the reasons of default assigned by the appellants are groundless; that they wilfully neglected to attend in the lower court, and that the plea of non-guardianship had been already overruled in the Court of Sudder Dewanny Adawlut. It is accordingly ordered, that the decision of the lower court be confirmed, and that this appeal be dismissed with costs.

THE 28TH NOVEMBER 1846.

PRESENT: J. F. CATHCART, JUDGE.

No. 791.

Regular Appeal from the decision of Moulvee Neamat Ali Khan, Principal Sudder Ameen, passed on the 3rd September 1845.

Ram Lall Chowdhree, (Defendant,) Appellant,

versus

Durbarie Lall Saho, Kesho Lal Saho, and others, (Plaintiffs,)

Respondents.

THIS suit was instituted by the respondents, on the 17th April 1845, 25th Cheyt 1252 F. S., to recover from the appellant the

sum of Company's rupees 1,335, lent on a bond on the 20th Assar 1246 F. S., 16th July 1839, together with principal and interest, amounting on the whole to Company's rupees 2,258-13.

The plaintiff sets forth that the defendant, Ram Lall Chowdhree, did on the above-mentioned date borrow and receive from the plaintiffs the said sum, and for which he executed a bond payable in four months and ten days, with interest at the rate of 12 per cent. per annum, and that, notwithstanding the expiration of the period fixed by the bond for repayment, the money has not yet been repaid. They therefore bring their action.

In the lower court, the defendant not appearing to answer the claim, the case was tried *ex parte*.

On the evidence produced by the plaintiffs to prove the bond which had been duly registered, and on consideration that the defendant had constantly put off the payment of the same on frivolous pretexts, and had declined to answer the suit although the legal notices had been duly served on him, and that there could be no doubt of the justness of the claim, the principal sudder ameen decreed the same in full with costs against the defendant.

In this court the appellant acknowledges the granting of the bond, but states that it was not for money lent but in settlement of a former account, and that a considerable part of the amount had since been paid; he chiefly urges that the legal notices before taking up the case *ex parte*, were not duly served on him by the lower court.

From an inspection of the papers however in the original case, it appearing that the appellant has had due notice served on him, and being further of opinion that the reasons of default assigned by the appellant are groundless, and that he has wilfully neglected to attend in the lower court, it is unnecessary to enter further into the defence now set up by the appellant to the original claim. It is therefore ordered that this appeal be dismissed with costs.

ZILLAH TIRHOOT.

THE 9TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 54.

Regular Appeal from a decision passed by Molovi Niamut Ali Khan, Principal Sudder Ameen of Mozufferpore Tirhoot, dated 24th December 1844.

Musst. Rajbunsee Koonwur, widow of Madhoram, deceased,
Appellant, (Plaintiff,)

versus

Kooldeepnarain, Principal; and Guardian of Sadoo Ram his minor brother, and Musst. Katranee Koonwur who died previous to the appeal, and Odwuntee Koonwur, Respondents, (Defendants.)

THIS suit was instituted for enquiry into the rights, possession, and mutation of the plaintiff's name in the records of the collectorate, of one third share, (the property of her demised husband,) of the 16 annas of Khanolee Dee and other villages, Chuckla Nyhee, purgunnah Beesarah, and of personal property. Action laid at Company's rupees 3,725-3-10.

The plaintiff states all the villages and personal property detailed in the plaint, were the estate of the late Kishenjeewun Lall, the father of her late husband, Madoo Ram, and also of Kooldeepnarain and Sadoo Ram, with the exception of the village Mutrapore, and the lands of the village Pudmole, which were purchased by her late husband and Kooldeepnarain subsequent to the demise of their father. Her late husband and Kooldeepnarain held possession until the 3d of Jait 1243 F. S., when her husband died, leaving herself and an unmarried minor daughter. Application was made for the mutation, in her name, of her late husband's portion of the property, and filed a varasutnamah, or documental proof of being legal heir to her demised husband. There being a case pending in court, in which her late husband and Kooldeepnarain sued Wahidoodeen Ashruf and others, she filed a varasutnamah or documental proof of being legal heir to her demised husband. Kooldeepnarain filed a petition objecting thereto, which the court rejected. Afterwards both parties entered into written treaties of adjustment, the plaintiff in a deed for herself, and Kooldeepnarain in a deed on his own account, and as guardian on behalf of Sadoo Ram. After the deeds were registered, they were exchanged. They were to this purport: "The plaintiff was to have and to hold possession of the real and personal property of her late husband

during her lifetime, without the power to alienate any portion thereof, and on her demise to devolve to Kooldeepnarain and Sadoo Ram. The wedding, &c., expences to be discharged by all three sharers; if it could not be effected without borrowing, the bond loan to be signed by all three. Neither party authorized to give a written document on any account whatsoever distinctly." Musst. Odwunt Koonwur, the mother of her late husband and of Kooldeepnarain and Sadoo Ram, filed a petition of objection to the treaty of adjustment in the collectorate, whereon the collector directed the plaintiff to sue in the court. Hence this suit.

Answer of defendants. Musst. Odwunt Koonwur pleads: being the mother, she is the guardian of her minor son Sadoo Ram; that Kooldeepnarain had not the power to subscribe himself as guardian to Sadoo Ram in the treaty of adjustment, without her permission so to do. The plaintiff not having been put in possession, that deed is inadmissible conformable to the shaster, and likewise not entitled to any property. A decision of the Sudder Dewanny Adawlut as a precedent is ready for delivery. The plaintiff's husband died while a minor, and for the period of nine years the plaintiff has been residing with her own mother, and not in the house of her husband. Kooldeepnarain pleads this addition: The plaintiff's father artfully induced him to write the treaty of adjustment, which, not having been enforced, is of itself null and void. In what manner the treaty of adjustment was written will be ascertained by the evidence of witnesses.

The principal sudder ameen dismissed the case on the grounds of various circumstances. During the lifetime of the mother, the brother of a minor cannot be the guardian. In the treaty of adjustment the brother is declared the guardian, the conditions thereof have not been completed, and have remained useless from the date thereof. The evidence of the subscribing witnesses to the treaty of adjustment being wavering, is not to be depended upon. The copy of the judge's decision and copy of decision of the Sudder filed by the plaintiff as precedents, and copy of Hundoolah Dhurum Shaster have no resemblance to this case, and are not applicable. From the documents filed by the defendants their possession is proved, and that the plaintiff had not been in possession. The property had not been partitioned. And the plaintiff's husband had always resided with the defendants as one family. Arising from these circumstances the plaintiff is only entitled to maintenance, in food and raiment.

The plaintiff appealed against this decision, urging that the decision declares during the lifetime of the mother of a minor, his brother cannot be guardian; in the several documents filed by the defendants is proved that Kooldeepnarain is the guardian of Sadoo Ram. On the treaty of adjustment being registered, application

to the collectorate was made for the mutation, and owing to the objection made thereto by the defendants, caused the institution of this suit; what remained on her, the plaintiff's part, to complete the conditions of the treaty of adjustment? Kooldeepnarain himself acknowledged that deed at the registry thereof. With respect to the witnesses wavering in their evidence, no instance thereof has been shown. The decisions filed as precedents not being applicable, is erroneous: they are applicable to the case; if not, they would not have been allowed to be filed under the 4th Clause, 10th Section, Regulation XXVI. of 1814. No paper is to be found showing that Musst. Odwuntee Koonwur was in possession. From the evidence of witnesses it is clearly proved her late husband had been in possession; and from the petitions of the ryots filed in the judge's court, prove her, the plaintiff's, possession. The objection made to her, the plaintiff, being heir to her late husband, was rejected by the court, and it was not appealed against, &c.

Answer of respondent Musst. Odwuntee Koonwur is in tendency a repetition of her reply to the plaint. Kooldeepnarain, although he appointed an attorney, did not file an answer.

COURT.

The points for enquiry in this case are: Who is the legal guardian, the mother, or the elder brother to the minor Sadoo Ram? If the elder brother, Kooldeepnarain, be guardian, is the treaty of adjustment genuine and valid? From the bawusteh of the pundit at Patna, called for by this court, it appears the elder brother to the minor is the legal guardian. The subscribing witnesses to the treaty of adjustment have clearly deposed to the authenticity of that instrument; nor is there any appearance of wavering in their deposition. The artifice of the plaintiff's father in the matter, is not made out, but that it was made use of by Kooldeepnarain is shown by the tenor of the instrument. It is valid under the circumstance of sundry decrees having been passed by the Sudder Dewanny Adawlut awarding to widows the right to hold possession of the property of their demised husband, during the lifetime of the widow, without power to alienate it or any portion thereof in any manner whatsoever. Under these circumstances the appeal is decreed in favour of appellant to hold possession of the property under conditions of the treaty of adjustment, and a proceeding be sent to the collector for the mutation of her name under conditions of the deed of adjustment. The costs of both courts to be paid by respondent, and the principal sudder ameen's decision reversed.

THE 24TH NOVEMBER 1846.

PRESENT : JOHN FRENCH, ADDITIONAL JUDGE.

No. 126.

Regular Appeal from a decision passed by Moulvee Niamut Ali Khan, Principal Sudder Ameen of Mozufferpore, Tirhoot, daied 22nd February 1845.

Ramnaraen Sing, Appellant, (Plaintiff,)

versus

Rambucksh Singh, Respondent, (Defendant.)

THE appellant sued for the sum of Company's rupees 1795-15-5, being principal and interest on bond dated 29th July 1840; the principal being the balance of a former bond for Company's rupees 5150-11-6, which was granted by the defendant and his son Shamlall; that amount having been embezzled by Shamlall, while in the employ of the plaintiff; which sum had been regularly sued for in court, and treaty of adjustment filed by both parties: setting forth the paying and receiving the sum of rupees 4050-11-6, and the granting and the receiving of a bond for 1100 rupees for the remaining balance, payable in six months with interest, and the costs of suit to be borne by the plaintiff. That 1100 rupees bond not having been discharged, is the cause of the suit.

The defendant denied having given sanction or authority for his own name, or that of the witnesses to be subscribed to the present or former bond, or to the solanamah, or treaty of adjustment, mentioned in the plaint. The plaintiff forcibly caused his son, Shamlall, to sign the first bond; on which account Shamlall complained in the criminal court, in which case the defendant filed a third party petition; the magistrate dismissed the case, arising from the institution of a civil suit for the amount of the bond. The subsequent transactions were effected by collusion of his son Shamlall with the plaintiff. That Shamlall was separated from him, and if he filed a solanamah or treaty of adjustment, he, the defendant, was not liable. He had four other sons, &c.

The principal sudder ameen dismissed the suit on the grounds: the embezzlement was effectuated by Shamlall, where was the cause for the defendant to sign the former or the present bond? which appears to have been signed by the pen of his son Shamlall, that on account of one son the defendant would not ruin himself and his other four sons.

Against this decision the plaintiff appealed urging: The evidence of his witnesses fully proved his claim, and the decision of the former suit was filed in proof of his claim, yet the principal sudder ameen did not take these circumstances into consideration. At the time the bonds were signed, the son and the father were

residing together as one family. The father cannot write, the son signed his father's name at his desire in the presence of the witnesses. The decision passed by the principal sudder ameen is entirely on supposition.

The respondent's reply is nearly a repetition of the reply to the plaint.

COURT.

The principal sudder ameen seems to have passed his decision more on the reasons arising in the mind of improbability of the respondent (defendant) giving sanction to affixing his name to any of the former or present instruments, than from the pleadings and evidence of witnesses. It is true, a person capable of embezzlement (on account of which there was no suit or trial) may be suspected of the likelihood of affixing his father's name to instruments, and attesting the same with his own signature; but the witnesses deposed he was sanctioned to do so by the father (defendant.) The power of attorney appointing and authorizing a constituted attorney of the court to file the solanamah or treaty of adjustment, filed in the former case was verified in court previously to filing the treaty of adjustment, and its counterpart from the adverse party. To doubt the authenticity of the power of attorney on a mere surmise without a regular impeachment and proof, will lead every individual who cannot write his own name to a power of attorney, and is cast in a civil suit, to bring forward allegations of illegality of his own power of attorney: his name thereon not having been sanctioned by him. Moreover, from the tenor of the reply to the plaint, and reply to the appeal, defendant, respondent, appears to have been aware of the artifice (if any) made use of against himself at the time of filing the treaty of adjustment and the power of attorney, why was not the matter at that time brought to the notice of the judge? To bring forward such a plea after an elapse of more than five years, can only be considered as a mere subterfuge to evade payment of the bond, which was noticed in the treaty of adjustment in the former case, and proved in this by the evidence of the subscribing witnesses thereon. Under these circumstances a decree is passed in favor of appellant, the costs of both courts to be paid by the respondent, and the principal sudder ameen's decision reversed.

THE 24TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 452.

Regular Appeal from a decision passed by Molovi Syed Mohamud Mohamid Khan, Sudder Ameen of Mozufferpore, Tirhoot, dated 24th June 1845.

Mr. J. B. Johnston, Appellant, (Defendant,)

versus

Shaik Nubbeebucksh, Respondent, (Plaintiff.)

THIS suit was instituted by the respondent to recover from the appellant the sum of Company's rupees 462-10-8½, being the principal and interest on arrears of rent from 8 annas instalment of 1248 to the end of 1249 Fuslee, on niz, or own cultivation of 55 beegahs, 2 biswahs and 13 dhoors of land with indigo, in the village of Russulpoor Ghose, *alias* Soorsoonee, purgunnah Sureisah.

The village was formerly held as a jagheer, or land exempt from payment of revenue to the Government. In 1226 and 1227 Fuslee, it was attached and a settlement made with the minhyedars, or the occupants of the village under a deed of exemption from revenue. The proprietors of the village appealed against the settlement, and ultimately obtained an order from Council, dated 29th December 1840, for the cancellation thereof, and for a settlement of the village to be made with the proprietors; they were accordingly put in possession by an order from the deputy collector, dated 7th of August 1841, and therein directed to pay the revenue from the 1st January 1841. The receipts filed, prove that injunction was duly complied with. The appellant having obtained leases to the extent of 5 annas portion of the village from the first settlement holders, which became null and void, together with the settlement, under the orders of the Council, the respondent called on the appellant to take a lease from him. Not having taken out a pottah, or deed, the appellant was forbidden to cultivate. Notwithstanding, the land was ploughed and was sown with indigo, and a quantity of kunttee, or stubble allowed to remain on the ground, which caused the respondent to complain in the criminal court under Act IV. of 1840, and obtained an order for possession. The respondent, being in his own right 4 annas sharer and holding the other 12 annas portion from the commencement of 1249 Fuslee, under three different leases from the other sharers of the village, sued for 4 annas portion of rent for the half year on account of 1248, and for the whole 16 annas portion on account of 1249 Fuslee, on the cultivation above-mentioned, at the rate of 6 rupees per beegah.

The appellant as defendant pleaded: The suit should have been against the ryots and not him. Forty beegahs agreeably to agreements made with the ryots, on payment of advance to them

as formerly, were cultivated with indigo, and their accounts adjusted and settled at the end of the year. In 1249 Fuslee there were some parcels of kuntee or indigo stubble, and sundry parcels, on which advances had been made to the ryots, the ground prepared and sown with indigo, which the respondent, plaintiff, caused to be rooted up, and sown with other kind of articles: under apprehension of being sued for damages done to the indigo crops, instituted this suit.

The sudder ameen passed a decision in favor of the plaintiff on the grounds: from copy of proceedings of the criminal court, and evidence of the plaintiff's witnesses, and the putwarry's paper of measurement, prove the defendant held possession of 55 beegahs, 2 biswahs, and 13 doors of lands in both years. The defendant's allegations: the quantity of land was less and by ryotwarry, is not proved; the niz, or own cultivation, was effected through the means of ryots.

In the appeal the appellant urges the same pleas as in his reply to plaint. If any rent be demandable, it is claimable from the ryots, he is not liable, having in the customary usage of the factories, made advances to the ryots for the extent of 40 beegahs, they brought the indigo weed to the factory, adjusted their accounts, and received their balance at the end of the year. The respondent is not entitled to rent prior to the date of order for possession, which was the 7th of August 1841, corresponding with Sawun 1248 Fuslee. The respondent pleads the order of possession enjoins the payment of revenue from 1st of January 1841, he is thereby entitled to the rents of the land from that date also, &c.

COURT.

The appellant, in proof of not having cultivated the land as koodkusht, or own cultivation, filed in the appellate court another agreement of the ryots for 13 beegahs, papers of measurement of the land cultivated with indigo, and caused a number of witnesses to be summoned to give evidence of his allegations, and to prove the authenticity of the measurement papers. Although the agreements of the ryots are to the extent of 40 beegahs only, and an attempt made to prove by evidence that quantity only was cultivated with indigo, yet the papers of measurement filed by the appellant exhibit the aggregate of the several parcels of land cultivated with indigo was 52 beegahs, 5 biswahs, and 11 dhoors: the cause of this difference is ascribed to the factory luggy, or measurement pole, being of a greater length than that of the zemindarry. Most of the witnesses brought forward were to establish the authenticity of the measurement papers; the correctness being admitted, the evidence of three or four witnesses was not taken. The evidence of the witnesses did not prove to the satisfaction of the court, the cultivation was strictly

ryotwarry, and not niz, or own cultivation: for the cultivation must needs be effected by servants or ryots. Now, the ryots had no pottah or deed for the cultivation of any land, which is proved by the evidence of the appellant's own witnesses, then with what rightful claim could they engage to cultivate indigo? and the sentence made use of in the engagements of the ryots, viz. "search is to be made for proper indigo land, to be selected and approved of by the amilah or officers and gentleman of the factory," such wording in the engagement could arise only from the proprietors or persons having similar influence over the ryots; and the appellant being at the time of entering into the engagements with the ryots a lessee of 5 annas portion of the village, had a claim to the receipt of rent to that extent of portion, or to cultivate the land to that extent, hence his influence. Such wording in an engagement strictly ryotwarry without any influence in the village would create disputes between the ryots and litigation between the factory and the proprietors of the soil: for the superintendant of an indigo factory cannot compel the engaging ryot or ryots to cultivate what land they may think proper to select with indigo. Under consideration the engaging ryots held no pottah, or deed, for the cultivation of land from the proprietors of the soil, and from the wording in the engagements, pointed out, the engagements cannot be deemed ryotwarry, but niz, or own cultivation, through the medium of the ryots. The appellant not having pleaded any right or claim to the soil, or that he had paid the rent of the land to any proprietor or persons having any interest in the land, selected and approved by him, which was cultivated with indigo, the rent for the same is to be paid from the 1st of January 1841 to the respondent, who is entitled thereto having paid the revenue to the Government from that date, as enjoined in the order, giving possession, on the quantity of land cultivated with indigo, as shown in his measurement papers. Under these circumstances the sudder ameen's decision is confirmed with a trifling amendment, and the appeal dismissed with costs of both courts.

THE 24TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.
No. 536.

*Regular Appeal from a decision passed by Mr. Samuel DaCosta,
Moonsiff of Teghra and Beegoo Serrai, dated 10th July 1845.*

Musst. Taqooraeen Oojaen, Appellant, (Defendant),
versus

Dookun Singh, Respondent, (Plaintiff.)

THE respondent sued the appellant for the recovery of the sum of Company's rupees 290-12-6, being the principal and interest of

a loan on bond dated 25th Sawun 1251 Fuslee, to be paid in the month of Bysack 1251 Fuslee.

The appellant as defendant denied the plaint; and pleaded: there being a large sum due from the respondent, plaintiff, on account of rent, there was no necessity to borrow from him. From 1248 Fuslee, Goonesh Dutt transacted all her business; if the bond be genuine, it would have been signed by him. The plaintiff is a sharer in the same mehal or estate with her, there are continual disputes between them, and this is an unjust suit.

The moonsiff passed a decision in favour of the plaintiff, on the grounds of the evidence of the subscribing witnesses to the bond having proved the claim.

The appellant urged: being a purdah nasheen, or a female screened from public view, how could the witnesses, who are not residents in the same village, and of whom she had no knowledge, know, it was her who directed the signing of her name to the bond, and directed the witnesses to attest it with their names? These circumstances were not taken into consideration by the moonsiff. The respondent alleged his claim was perfectly established by the evidence of the subscribing witnesses to the bond.

COURT.

The witnesses having been re-examined and questioned in the appellate court, and no discrepancy having been elicited in their cross examination, the appeal is dismissed with costs of both courts, and the moonsiff's decision confirmed.

THE 27TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 1066.

Regular Appeal from a decision passed by Molovi Niamut Ali Khan, Principal Sudder Ameen of Mozufferpore, dated 21st February 1843.

Nahil Chowdree and others, Appellants, (Plaintiffs,)

versus

Keidee Chowdree and others, Respondents, (Defendants.)

THIS suit is for the possession of 2 annas, 9 gundahs, 1 cowrie, and a trifle more within 4 annas of 8 annas of the whole 16 annas of the kusbah or town of Mozufferpore, pergunnah Bissarah, rent-free land. Action laid at Company's rupees 1173-5-4, being 18 times the value of the land.

The plaint sets forth, Yousoof Ali Khan was 8 annas sharer, Kooshaul Taqoor and others, sharers of the other 8 annas portion of the town of Mozufferpore. The latter mentioned sharer disposed of the entire village Tarsundputtee, and half of the town of

Mozufferpore by bill of sale, under date 15th of Suffee 1178 Fuslee, for the sum of Sicca rupees 550, to Luchmun Chowdree and others, the ancestors of the defendants, in conjunction with Bodram Chowdree, Bholahduth Chowdree, and Ramnaraen Chowdree, the ancestors of the plaintiffs, who obtained the mutation of their names as sharers in the village Tarsundputtee, in the records of the collectorate; and both parties continued in possession of the town of Mozufferpore, until the year 1515 Fuslee, when the 4 annas share of the town of Mozufferpore was leased from 1216 to 1220 Fuslee, to Surreebjeet Chowdree, one of the sharers within the defendants' portion of the town of Mozufferpore, who agreeably to the counterpart of the lease paid them the profits thereof, until the year 1237 Fuslee. The defendants having in the year 1238 Fuslee coalesced, suspended payment, and will not relinquish the lands.

Answer of defendants—Kishnaraen Chowdree, and nine others, corroborate the plaintiffs' plaint, and allege they are sharers agreeably to family succession.

Answer of Keidee Chowdree and six others—plead, the plaintiffs have sued sundry persons, who have no concern in the matter, with a view they may acknowledge the rights of the plaintiffs. The ancestors of the plaintiffs not paying their quota towards the purchase of the 4 annas share of the town of Mozufferpore, their, the defendants', ancestors paid the whole purchase money. Their ancestors and themselves have continued in possession of the 8 annas portion of the town of Mozufferpore. The plaintiffs have had no concern in the collection of the dyahkee, or malikana per centage, or by lease, as set forth in the plaint. The proof of the plaintiffs' right, alleged to be established from an answer of Assa Chowdree, defendant, in a case in which Cheeta Chowdree was plaintiff, merely mentions the circumstance of the bill of sale, and does not prove the plaintiffs were in possession.

Answer of Bhoran Chowdree, similar to the answer of the above defendants, and further pleads, that Surreebjeet Chowdree, his ancestor, never wrote the kaboolet or counterpart of the lease.

Answer of Gowree Chowdree and 4 others, similar to the above defendants.

Answer of Hoomer Chowdree and 2 others, corroborate the plaintiffs' plaint, and allege themselves to be sharers agreeably to family succession.

Answer of Dyal Chowdree and 13 others, similar to the above answer.

The remaining 13 defendants did not file any answer.

The principal sudder ameen dismissed the suit on the following grounds.

Under sundry circumstances in the pleading of the case, the plaintiffs' plaint is false. In this case, there are 53 plain-

tiffs and the same number of defendants. Some of the defendants have denied the claim of the plaintiffs, and some have acknowledged the claim, and at the same time allege they have claims to shares; but this portion of the defendants, who have joined in the measure of the plaintiffs have failed to attend subsequent to filing their answer. The plaintiffs have not proved their ancestors' or their own possession from the date of the purchase, that is, from 1178 Fuslee to the date of institution of the suit, or established any proof from documental or evidence of witnesses, the cause of their dispossession. Copy of bill of sale is not sufficient to prove their claim; and the institution of this suit is after an elapse of 70 years from the date thereof; hence, the plaintiffs' suit, being contrary to the 14th Section, III. Regulation of 1793, and to the II. Regulation of 1805, is not cognizable in court. The kaboolyet or counterpart of the lease, filed by the plaintiffs, appears to be fabricated: the paper is water stained, but the writing is clear and not effected by the water stain, from which it is suspected that an old former stamp paper was searched for, and subsequently written on.

Against this decision the plaintiffs appealed, urging: From the face of the case their suit had been perfectly proved, which the principal sudder ameen has not taken into consideration. The principal sudder ameen states, from the date of purchase possession had not been proved, and that the copy of the bill of sale is not sufficient proof of possession. Their proofs are: first, copy of the bill of sale; 2ndly, possession of 8 annas share of the village Tarsundputtee (purchased under the said bill of sale); 3rdly, copies of documents obtained from the court and evidence of witnesses filed. The objection to the kaboolyet or counterpart of the lease is a mere supposition.

Answer of respondents. By the date of the bill of sale, the sale is prior to the accession of territory by the Government, from which time neither the ancestors of the appellants or the appellants themselves have ever been in possession. The kaboolyet or counterpart of the lease filed by the appellants is mentioned in the decision of the principal sudder ameen to be a fabrication.

COURT.

There is no proof adduced under what circumstance the several appellants (plaintiffs) held possession of the portion sued for; even the plaint on that point is vague and indefinite, being in general terms: their ancestors and themselves held possession to 1215 Fuslee. The first appearance and probability of any possession takes its rise from the affirmation: their ancestors leased 4 annas share of the town of Mozufferpore from 1216 to 1220 Fuslee, to Surrebjeet Chowdree, who returned to them a kaboolyet or counterpart of the lease; which deed is filed, and is to this purport: "I, Surrebjeet Chowdree, sharer of the town of Mozufferpore, having

taken the lease of 4 annas of the abovementioned town, the share of Kullhye Chowdree, Juggernaut Chowdree, Mhabil Chowdree, Seetaram Chowdree, and Purboonauth Chowdree, at the annual rent of Sicca rupees 15, from 1216 to 1220 Fuslee, on advance of Sicca rupees 100, the payment of which is to be made at the expiration of the lease; of the rent 12 rupees is to be taken as interest on the loan, and remaining 3 rupees to be given to the proprietors; if the loan be not discharged at the expiration of the lease, a further sum of 2 rupees is to be taken annually in discharge of the principal loan, and the remaining 1 rupee, to be paid to the proprietors." Of the three subscribing witnesses to this instrument, one is said to be dead, the other two gave their evidence, which cannot be credited, arising from both the witnesses' want of recollection, omission of the most essential points, and discrepancy in other points. Neither of the witnesses recollected at what annual rent, or for what period the lease was granted, and neither mentioned by whom the rent of the lease was paid, and to which of the lessors, but both deposed that Surrebjeet Chowdree signed the counterpart of the lease. The first witness, Mohone Misser, knew that 3 rupees, the profit or rent of the share, were paid to the plaintiffs, for 5 or 7 years, because he resided during that period in the village Kharonah, in which the plaintiffs resided. How the lessors came into possession of the share leased, he did not know. The other witness, Munneear Chowdree, deposed, the plaintiffs were in possession; that he heard from his father and grandfather it was by purchase; and one rupee rent was annually paid to the plaintiffs. Four other witnesses were brought forward to prove possession and receipt of rent. The evidence is not sufficiently precise, and shows their knowledge of the plaintiffs', appellants', coming to possession to be more on hearsay than otherwise; and a complete failure on the point of payment of the rent, under the counterpart of the lease, by the discrepancy, the evidence of the two witnesses who deposed to that point. The witness, Mohur Taqoor, deposed, the payment of the rent of 3 rupees annually from 1216 to 1220 Fuslee, and one rupee from 1221 to 1235 Fuslee, were paid by himself to Mhabil Chowdree, and others, the plaintiffs, (he being collector of the rents of the town of Mozufferpore on the part of Yousoof Ali Khan, who held 8 annas portion in his own right, and the other 8 annas by lease.) The witness, Kunhye Chowdree, declaring himself to be a sharer, deposed, the rent of 3 rupees to 1220 Fuslee, and afterwards 1 rupee were paid by Surrebjeet Chowdree, to the period of his death, which occurred in 1227 or 1228 Fuslee. After the death of Surrebjeet Chowdree the rent was paid by his grandson, Kushee Chowdree, but to whom the rents were paid, is not mentioned. The evidence of Jummuck Lall was hearsay evidence, from the witness, Mohur Taqoor. The witness, Durgah Chowdree, seems to have been called to allege his claim to the 8

annas portion of the town, now held by Mohamud Tuckee Khan. Copy of reply of Ussa Chowdree, and copies of evidence given by three witnesses in the case of Cheeta Chowdree, plaintiff, do not elicit any proof in behalf of the appellants; they had to show that Bhorun Chwdree was 4 annas sharer of the town; and Juggernath Chowdree, the son of Bhorun Chowdree, was one of those three witnesses; deposed he himself was 4 annas sharer, and made no mention there were other sharers therein. Evidence given in a case, on the virtue of which the decision is not passed, the case in question was dismissed under limitation rules, cannot be admitted in proof in another case. The appellants have not proved themselves heirs of Bhorun Chowdree, in fact, his heirs are his grandsons Rugbunse Chowdree and Beekun Chowdree, still in existence and defendants in this case. It is true, from the kubooleet or counterpart of the lease filed, Juggernauth Chowdree appears to be one of the lessors, but the proof of the authenticity of that document has failed, and the union of the appellants with him is not established. It is true the respondents have not adduced any proof of their allegation, "that the ancestors of the appellants did not pay their quota of the purchase money for the share of 4 annas of the town of Mozufferpoore, and their ancestors paid the whole purchase money for the town;" this is immaterial, under the circumstance of the appellants not having proved their plaint, to which is the first essential point a court has to look. Under these circumstances the appeal is dismissed, with costs, and the decision of the principal sudder ameen affirmed.

THE 27TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 1406:

Regular Appeal from a decision passed by Molovi Syed Ashruff Hoosein, 2d Principal Sudder Ameen of Mozufferpore, Tirhoot, dated 20th July 1843.

Lockurmun Opadeeah and Eshreeduth Opadeeah, Principals and Heirs of Beerbuder Opadeeah, deceased, Girjanund Opadeeah and Nynynund Opadeeah, (Appellants,) Defendants,

versus

Sheehooram Singh and seven others, (Plaintiffs,) Respondents.

THE suit is for 501 beegahs of deeharah or alluvial land appertaining to village Bungrah, pergunnah Ghadahsund. Action laid at Company's rupees 1503.

The village Bungrah appertains to the plaintiffs, is situate on the east side of the river Great Gunduck. The defendants' lands, denominated mouza Madapore Hazaree, is on the same side of the river to the north of the plaintiffs' village. (The attorney for

the defendants declared in this appellate court, that the mouza Madapore Hazaree is not an inhabited village but merely the land has that appellation.) The first dispute occurred in 1220 Fuslee, when Berman and Opadeeah, the father of the defendants, sued, under the XLIX. Regulation of 1793, the present plaintiffs, for 30 beegahs of alluvial land; while the case was pending in court was carried away, it is said, with a considerable quantity of land that was in the possession of the present plaintiffs, by the encroachment of the river; the case notwithstanding was dismissed on the 27th December 1818, on the ground, the claim to the land had not been established. In the year 1224 Fuslee the land was again re-deposited by alluvion and receding of the river. The plaintiffs took and held possession until 1229 Fuslee, when the defendants came and carried away the rubbec crop; the plaintiffs complained in the criminal court; the case was transferred to the civil court under the VI. Regulation of 1813; the XV. Regulation of 1824 having been received, it was again transferred to the criminal court for trial; the magistrate proceeded to the spot and marked out land not under dispute, and passed an order agreeably thereto; on appeal being preferred, the Sudder Nizamut Adawlut reversed the magistrate's order, and directed enquiry to be made who were in possession and to put them in possession; whereon the magistrate made fresh boundary marks and passed an order; which on appeal to the commissioner, the order was reversed and direction given for the attachment of the land, and both parties to sue in the civil court for their rights. Hence the present suit.

The defendants pleaded—the suit for 30 beegahs of land was not dismissed, it was in a manner of a nonsuit, owing to the land having been carried into the river, the trial thereof was not completed; and the present suit is for alluvial land, which, by customary usage, belongs to the estate to which it is annexed.

The principal sudder ameen, Molovi Abdool Wahid Khan, dismissed the suit on the following grounds. The alluvial land was not opposite to the estate of the plaintiffs, but that of the defendants. On appeal Mr. Oldfield, judge, confirmed that decision. On special appeal being preferred to the Sudder Adawlut, that Court, arising from both parties having alleged they had sustained diminution of their original land by the encroachment of the river, reversed the decisions of the lower courts, and directed a re-investigation to call for proofs and documents and to measure the area of the estates of both parties, and to give the land under attachment to those it may be proved to belong. The re-investigation of the case was referred to the 2d principal sudder ameen Molovi Syud Ashruff Hoosein Khan, who passed a decision in favour of the plaintiffs, on the following grounds. The prior suit was instituted by the defendants, which was dismissed, since which period a long time has elapsed without appealing against it, then there is no doubt but that land and

other land under attachment to the south thereof is the right of the plaintiffs. It is ascertained from the attaching ameen's statement, the copy of proceeding directing the attachment, and the sketches taken by Roshun Loll ameen, under the XLIX. Regulation case, and that of Hamed Khan ameen, who attached the land under the first order, and from his own, that to the south of the mouth or opening of the river Byah, east of the Great Gunduck river, to the south of the birt or charity land of Gun-nesh Misser, north of the village Dosur, is entirely the plaintiffs', and whole of the lands to the south and west of the mouth of the river Byah ascertained by the evidence of witnesses to belong to the plaintiffs.

Against this decision the defendants appealed, urging: The decision is erroneous in fixing their, the appellants', land to the south of the respondents' village, when the villages Esa Chupra and Dosur are immediately to the south of the village of the plaintiffs. The birt or charity land of Gunness Misir is within their, the appellants', mouza, and to the south of it is the village of the respondents. The awarding of the land to the west of the birt or charity land is incorrect. The XLIX. Regulation case was not dismissed, but in a manner of a nonsuit. All the witnesses adduced, 28 in number, by them, the appellants, and three of the respondents' witnesses, proved their, the appellants', claim, which was not taken into consideration by the second principal sudder ameen.

COURT.

The decision of the Sudder Dewanny Adawlut directs the measurement of the area of the estates of both the contending parties. The report of the ameen of the measurement not being clearly explained, the ameen was summoned to this court, and no satisfactory explanation could be obtained from him, what was the quantity of the original or old land, and what was the quantity of the alluvion land measured. Owing to this, and the omission to measure the parcel of land pointed out by the plaintiffs as belonging to the defendants, who objected thereto, under the plea of not being theirs, the investigation is incomplete; therefore the decision is reversed, and the case to be returned for re-investigation. The copy from the book of villages regarding the estates of the contending parties from the collectorate filed by the plaintiffs, exhibits only:

The village of Madapore Hazaree contains two principal villages with an area of 1201 beegahs of land:

The village Bungereh contains two principal and one dhaklee villages, with an area of 4002 beegahs.

Not being explicit, from the want of the names of the villages, to call on the collector, by proceeding, to transmit to the court a list of the names of the villages in the two estates, and to state whether all the villages adjoin and form one compact parcel, or are scattered

and separated with respective quantity of land attached to each. If compact, to report the boundaries of the two estates. If separate, the area of each village and their respective boundaries; and what was the quantity of alluvion land, if any, included in the settlement for Bungrah; and to request the collector to furnish a report of the several alienations that may have been made from the two estates by decrees of court, bills of sale, or by arbitration decisions to other villages. From a decision filed in case it appears, the proprietors of the village Paharpore sued the proprietors of Bungrah for 505 beegahs of land, each claiming the same as appertaining to their respective villages. The decree is in favor of the proprietors of the village Paharpore, hence, a diminution of that quantity of land from the original area of Bungrah: so in like manner may have other decrees deteriorated the original area of both the estates. To depute another ameen (not the pergunnah ameen, for he has a great deal of business to attend to) to make a fresh measurement of the lands, distinguishing the old standing land from the alluvion land; and to measure the spot pointed out by the plaintiffs as belonging to the defendants, which the latter objected to, unless others claim the proprietary right thereto, and can show document or documents for the spot, which can be depended upon. If no part of the original land has been carried away in the river, to take into consideration, whether the alluvion land annexed to that estate appertain to it or not, under the II. Regulation of 1819, and to decide according to the merits of the case. The amount of stamp of the appeal plaint to be returned, &c.

THE 27TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 1407.

Regular Appeal from a decision passed by Molovi Syed Ashruff Hoosein, 2nd Principal Sudder Ameen, Mozufferpore, Tirhoot, dated 20th July 1843.

Lockurman Opadeeah and Eshreeduth Opadeeah, Principals and Heirs of Beerbuder Opadeeah, deceased, Geerjanund Opadeeah and Nynynund Opadeeah, Appellants, (Plaintiffs,)

versus

Sheehooram Singh and seven others, Respondents, (Defendants.)

THIS suit was instituted by the appellants for the recovery of 505 beegahs of land, under attachment of an ameen (by orders of the commissioner,) appertaining to their mouza Madapore Hazaree. Action laid at Company's rupees 4545.

The plaint sets forth their mouza is situate near the Great Gunduck river, and the village Bungrah, the property of the

defendants, is on the south of the villages Essa Chuprah and Dosur. In 1220 Fuslee, the ancestors of the defendants took possession of 300 beegahs belonging to their, the plaintiff's, mouza, owing to want of leisure did not sue them; afterwards they took a further quantity of about 100 beegahs. Deenmun Rae complained in the criminal court, while that case was pending, the father of the defendants carried away the produce of 30 beegahs, then the ancestors of the plaintiffs sued for the 30 beegahs of land, under the 49th Regulation of 1793. An ameen was deputed, the whole of the lands above alluded to, together with the 30 beegahs, were carried away by the river, and the measurement of the land and the investigation of the 49th Regulation case remained suspended. In 1222 Fuslee the lands were again restored by alluvion, the defendants creating a dispute, the matter was carried to the criminal court, transferred from thence for trial under the 6th Regulation, and re-transferred to the criminal court to be investigated under the 15th Regulation of 1824. The magistrate himself proceeded to the place and pointed out the public road leading from the villages Essa Chuprah and Dosur to be the boundary separating the property of the contending parties; subsequent thereto, the commissioner directed the land to be placed under attachment, and both parties to sue for their rights in the civil court. The plaintiffs, having to attend to their suits at Allahabad and other places could not sue immediately, but the defendants did, which case being still pending, they also sue for the land under attachment.

The defendants plead: the public road proceeding direct from the village Basdeibpore eastward to the margin of the river, is the boundary dividing the property of the contending parties: to the north is the property of the plaintiffs, to the south the property of the defendants. The land under dispute belongs to the defendants' village. The plaintiffs themselves assert the land was restored by alluvion in 1222 Fuslee, twenty-eight years ago: if they had any just claim thereto, they would have sued instantly. Regarding the land under attachment, that order was passed on the 2nd of April 1830, more than twelve years have elapsed since then, and if they had been injured by that order they would have sued immediately.

The second principal sudder ameen dismissed the suit on the grounds: from the perusal of the papers of this case, and the papers of the case in which Sheehooram Singh and others are plaintiffs, it is proved the land appertains to the village Bungrah.

The plaintiffs appealed against this decision, urging* as the decision was passed on the merits of the other case in which Sheehooram Singh and others are plaintiffs, their appeal plaint in that is sufficient for this case.

COURT.

This suit appears to have been instituted as a cross suit to give as much further obstruction as possible to the plaintiffs in the case No. 1406, which having been returned for re-investigation, and this being in a manner interwoven therein—this is also returned to be again decided at the same time with that.

THE 27TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 137.

Regular Appeal from a decision passed by Molovi Syed Ashruff Hoosin, 2nd Principal Sudder Ameen, Mozufferpore, Tirhoot, dated 18th December 1843.

Lockarman Opadeeah and 3 others, Appellants, (Defendants,)

versus

Sheehooram Singh and 7 others, Respondents, (Plaintiffs.)

IN this case the respondents sue the appellants for the possession of 150 beegahs of land appertaining to the village Bungrah, purgunnah Ghadursund, and the reversal of the session judge's proceeding passed on the 8th of September 1838, under the 15th Regulation of 1824. Action laid at Company's rupees 1,500.

The plaint sets forth the village Bungrah, aslee mei daklee, principal and annexation thereunto belonging; viz. Bungrah, Bungrah Jheetah, Bungrah Azman, with an area of 4180 beegahs, is bounded on the east by the village Hoosapore, Sarunpore, *alias* Roop Chuprah, Parpore, Puckree, Etmaundpore, Essa Chuprah, Dechoosur, birt, or charity land of Deenmun Misser, heir of Gunceish Duth Misser; on the north by the boundary of the village Madapore Hazaree; to the west and south by the Great Gunduck river. Formerly Deennanauth Opadeeah, the ancestor of the defendants, sued Cheettree Rae, their grandfather, for 505 beegahs of land; in which case an ameen was deputed; to whom the then plaintiffs pointed out a large tract of land. They obtained a decree for 505 beegahs on the 24th of October 1803. The Patna provincial court confirmed the decision, but restricted their possession in the execution of the decree to that quantity only, of which they were put in possession, and the remaining land pointed out to the ameen was left in the possession of the present plaintiffs. In 1816 the present defendants raised a disturbance on account of the land, which was carried to the criminal court, and the decision passed in favour of the present plaintiffs under the 6th Regulation of 1813. In 1219 Fuslee, the whole of the land, with the exception of the 505 beegahs, was carried into the river. In 1224 Fuslee, the land was re-deposited by alluvion, and re-possession taken thereof by the present plaintiffs. In 1243 Fuslee Girjanund Opadeeah, one of the present defendants, again raised a dispute for 5 or 6 beegahs

of land, which was brought to the notice of the magistrate, who under the 15th Regulation of 1824 confirmed the present plaintiffs in their possession on the 20th April 1838; on appeal, the session court returned the case for re-investigation, and the magistrate adhered to his former decision on the 18th July 1838; being again appealed, the session judge on the 8th of September 1838 directed possession to be given to the adverse party, to the very margin of the river. Being thus dispossessed, a special appeal was preferred to the Sudder, that Court directed to sue regularly. Hence this suit.

The defendants plead: the boundary specified as that appertaining to the plaintiffs' village is incorrect. The ameen formerly deputed to measure the lands of the villages Bungrah and Parpore, at the same time formed the boundary of the two villages, according to which a decree was passed, and possession given to them, the present defendants; whereas the estates of both parties are separated on the east by the village Puckree and on the north by the public road leading near the inhabited village Bungrah. Proofs of the parties in the 6th Regulation case were not submitted. The land being closer to Bungrah was awarded to the plaintiffs, but, in the subsequent investigation, awarded to them, the defendants. The plaintiffs assert the area of Bungrah to be 4180 beegahs, which was proved in the investigation of the former case to be incorrect.

The second principal sudder ameen passed a decision awarding a portion of the disputed land to the plaintiffs on the following grounds: Owing to their being no signs of the former boundary, or of that stated by the plaintiffs, or that required by the defendants; and although the defendants deny the kurposh tree on the Company's embankment, to be that noted down in the former sketch, yet on inspection of the former and present sketches, is evidently the same; taking that tree as a fixed mark, drawing a straight line therefrom to the north, and from the same point drawing a straight line westward to the river, all the land to the north and west of those lines have been proved to belong to the plaintiffs. The 20 beegahs and 14 kuttahs of land having been formerly in the possession of the plaintiffs is not affected by this case. The land deposited by alluvion to the westward of the land formerly decreed to the defendants, and southward of the westward line drawn to the river, is not the plaintiffs': it belongs to Parpore. The defendants to pay two-thirds of the plaintiffs' costs. No mention is made in the plaint of mesne profits, and the land disputed for being entirely sandy no mesne profit is allowed.

The defendants appealed against this decision, urging it to be in opposition to the decision passed formerly in their favour in 1803, which was carried to the Sudder Court, and contrary to the decision in their favor under the 15th Regulation of 1824, the boundary dividing the two villages being the road of the village Puckrea.

No. 139.

The plaintiffs appealed against the decision, urging: the land to the south and west of the line drawn westward from the tree to the river, was in their possession on the institution of the former suit, to the period of dispossession by the session judge; and for awarding only two-thirds of their costs, and *are* also entitled to mesne profits.

COURT.

The lands sued for appear to have been originally in the possession of the respondents, plaintiffs, at the time the decision of 1803 was passed. Under that circumstance the magistrate upheld them in their possession; the session judge reversed the order of the magistrate, with a view to prevent future disputes arising from the instability of the river, some times cutting away, and at others re-depositing the land, directed the land under dispute to the very river to be put in the possession of the appellants, defendants, not recollecting, the portion immediately to the south of the public road, of the village Puckree, as exceeding the 505 beegahs decreed to the appellants, was excluded from their possession, and the land west of the 78 beegahs parcel, a component part of the 505 beegahs, had long been in the possession of the respondents, plaintiffs. Under all circumstances of the case the second principal sudder ameen's decision is fair and just: as that portion only has been left in the possession of appellants, defendants, which would likely create endless disputes by the instability of the river, if awarded to the adverse party. Under these circumstances the second principal sudder ameen's decision is confirmed and both the appeals rejected, each bearing their respective costs on the appeals.

— THE 27TH NOVEMBER 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 138.

Regular Appeal from a decision passed by Molvi Syud Ashruff Hosein, Second Principal Sudder Ameen of Mozufferpore, dated 18th December 1843.

Lockurnn Opadeeah and 3 others, Appellants, (Plaintiffs,)

versus

Sheehooram Singh and 7 others, Respondents, (Defendants.)

THIS suit was instituted by the appellant for the reversal of the order passed under Regulation XV. of 1824, by the session court, dated 28th November 1839, thereby dispossessed of 20 beegahs, 14 kuttahs of land, belonging to the village Parpore, for the recovery of which and mesne profits from 1247 to 1250 Fuslee, the action is laid at Company's rupees 462-6-6.

The defendants allege the land appertains to their village Bungrah, although it had been measured by the ameen deputed in the case for 505 beegahs, decreed to the plaintiffs in 1803 and 1805. It exceeded the quantity for which decree was passed, and the plaintiffs were not put in possession thereof and was decided in their, the defendants', favour under the 6th Regulation case, dated 27th December 1816; against which no appeal was preferred, and two twelve years have since elapsed, therefore under the limitation rules is not now cognizable in court.

The second principal sudder ameen dismissed the suit under the limitation rules: the plaintiffs not having appealed against the order passed under date 27th December 1816, for putting the defendants in possession of the land in question.

The plaintiffs appealed urging: The defendants, respondents, in a case, which they sued Baboo Kishendeehoo Narain Singh and others, in which the appellants, plaintiffs, were a third party; in the decision of that case the second principal sudder ameen stated, that sundry persons sue under the 6th Regulation case for proof to be brought forward at a future period; in this case he has not reflected on that circumstance, or taken into consideration: by this dismissal, the decision passed in favour of the appellants in 1803 becomes reversed.

COURT.

From perusal of the papers it appears the parcel of land under dispute has more than once, together with other portions of land annexed thereto, been brought before the criminal court, both the magistrate and the session judge upholding the present respondents in possession. The judgment passed by the second principal sudder ameen being perfectly correct, the decision is confirmed, and the appeal rejected with costs of both courts.

ZILLAH TWENTY-FOUR PERGUNNAHS.

THE 11TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Syed Oosman Ally, Additional Principal Sudder Ameen, passed on the 20th of August 1845.

Kylass Basseenee Debea, and Ram Chunder Roy, (deceased, pending appeal,) respectively widow and son of Byrub Chunder Roy, (original plaintiff,) former plaintiffs; and Gungamunnee Debea, widow of Ram Chunder Roy, Appellants,

versus

Seeboo Soondree Debea, widow of Meis Chunder Roy Chowdry, (deceased,) Sama Soondree Debea, wife of Oomachurn Roy, Baichoo Chunder Mookerjee, and Raj Cōmar Banerjee, executors of the estate of Meis Chunder Roy, Kallymohun Roy Chowdry, and Doorgamunnee Debea, widow of Nurnarain Banerjee, (deceased, pending appeal,) Respondents.

FOR rupees 1469, 2 annas, 9 gundas, 1 cowree, on account of possession of land.

The plaint sets forth that Seebnarain Roy Chowdry had four sons, the eldest (father of the defendant, Kallēmohun Roy Chowdry) was called Hur Chunder Roy Chowdry, the second was Meis Chunder Roy Chowdry, (deceased,) the third was Byrub Chunder Roy Chowdry, and the fourth was Sumboo Chunder Roy Chowdry, who died during minority. Hur Chunder, after their father's death, managed or superintended the property, and while he did so, one Ram Hurry Mitter pledged Chuck Hutta, an hereditary farm (mouroosee izara) belonging to Ram Hurry, (which comprehended 498 beegahs 6 kottahs,) with them, for 900 rupees; the pledge was, the plaint states, made to all three brothers, but the bond or deed of mortgage was worded, by consent or desire of Hur Chunder, Meis Chunder, and Byrub, as if the mortgage of the property above named was to Taramohun Mookerjee, nephew, on the sister's side, of the three brothers. The payment of the 900 rupees was made to Ram Hurry during the lifetime of Hur Chunder Roy Chowdry. Subsequently, on the 26th of Aughun 1235 B. S.,—Hur Chunder having died previous thereto, and during the management, or superintendence, of Meis Chunder Roy Chowdry, Hur Chunder's next brother,—Ram Hurry Mitter, on a second mortgage of the same property, borrowed rupees 450, and the

mortgage bond was again written in the name of the above named Taramohun Mookerjee, nephew of Meis Chunder and of Byrub Chunder. Again, on the 6th of Pose 1236, Ram Hurry Mitter in consideration of getting a third loan of rupees 1602, 8 annas, and of being allowed to defer the payment of rupees 1597, 8 annas, due on account of the loans made previously (with interest and costs of stamps) gave a kutkobala, or deed of conditional sale, pledging the property of Chuck Hutta to the above named nephew of Byrub and Meis Chunder, for the aggregate of those two sums, rupees 3,200. After this, Ram Hurry Mitter died, previous to which the civil court was applied to for foreclosure. On the 26th of Aughun 1238, the sons and heirs of Ram Hurry Mitter sold the property of Chuck Hutta, as well as other property, along with some bir-moter land therein, consisting of 27 beegahs $2\frac{1}{2}$ kottahs, for the amount of the kutkobala and interest due thereon, rupees 3,957, and for the sum of 175 rupees due on another account by Ram Hurry Mitter, making the consideration altogether amount to rupees 4,132; but the kubala, or deed of sale, then drawn out, was in the name of Meis Chunder Roy Chowdry, though he and Byrub, and Kallymohun, their nephew, son of Hur Chunder, their late brother, obtained possession of the property mentioned in the kubala, or deed of sale. In Srabun 1240 B. S., they all three separated, and in Kartick of that year, Byrub having gone to collect revenue, Meis Chunder dispossessed him of his portion of the property he had jointly purchased from Ram Hurry Mitter's sons. In 1246 Meis Chunder Roy Chowdry died, and now this action is brought by Byrub against Meis Chunder's widow, Seeboo Soondree, against the wife, Sama Soondree, of the son of Meis Chunder Roy Chowdry, who was named Ooma Churn Roy Chowdry, but of whom no intelligence has been received for many years; also against the two executors Baichoo Chunder Mookerjee and Raj Coomar Banerjee, who were appointed by Meis Chunder on his death-bed, and against Kallymohun Roy Chowdry, son of Hur Chunder Roy Chowdry. In a supplementary plaint, plaintiff sued Nurnarain Banerjee, to whom Meis Chunder had mortgaged the property comprised in the kubala, or deed of sale, executed in favor of that person by the sons of Ram Hurry Mitter, on the 26th of Aughun 1238, and who, Nurnarain, had obtained a decree for the money lent. The plaintiff claims the 5 annas, 6 gundahs, 2 cowries, 2 krants share, being one-third portion of the property included in the above described deed of sale.

The reply of Seeboo Soondree Debea, widow of Meis Chunder, is to the effect that the property of Chuck Hutta and others, mentioned in the said kubala, or deed of sale, was all purchased by her husband with his own money, solely on his own account; that the plaintiff, Byrub Chunder, never had any interest in it; if so, she urges, that he would not have allowed a period of nearly

eleven years to elapse before bringing this action; and she further urges that the whole of the property, including the portion under litigation, was pledged as security to Government by Meis Chunder Roy Chowdry, for a debt due by one Esan Chunder Chatterjee, and that no objection, or claim, was then raised by the plaintiff, or the defendant Kallymohun, whose answer is in support of the plaintiff's claim, and this, notwithstanding that the enquiry into the sufficiency of the security was conducted in the presence of the plaintiff's gomastah. Further the defendant alleges that the 16 annas of the mouroosee izara, including the property under litigation, are comprised of the $6\frac{1}{2}$ annas share of the talook No. 47, and of the $9\frac{1}{2}$ annas share of the talook No. 63, in the collector's office. The proprietors of these estates are Byrub Chunder Roy Chowdry, Meis Chunder Roy Chowdry, (husband of the defendant,) and Kallymohun Roy Chowdry, the defendant. These are the recipients, as talookdars of the above enumerated talooks, of the rent from the defendant as hereditary farmer, and being so, she asks, why did they, for so long a time, permit her to pay the revenue as sole hereditary farmer, granting her receipts for the same? Further defendant pleads that her husband mortgaged the property in dispute with the defendant Nurnarain, for rupees 3000, and that he brought an action for that amount, and obtained a decree. During the trial of that action neither Byrub, or Kallymohun, put in any claim or petition, which they would undoubtedly have done, had they been hereditary co-farmers of the property.

Nurnarain Banerjee, the defendant, states in his answer that Meis Chunder Roy Chowdry had truly, as Seeboo Soondree also states, mortgaged the entire 16 annas of the hereditary farm, with the birmooter land mentioned in the kubala, and that he obtained a decree for the sum lent. He states that the present suit is now brought for the purpose of defeating his claim.

The two executors appointed by Meis Chunder Roy Chowdry, at the time of his death, filed answers in conformance with that of Seeboo Soondree; and, at last, Kallymohun filed an answer stating that the property had been, as plaintiff stated, bought by plaintiff, Meis Chunder, and himself. He says he first advanced the 900 rupees, at the time of the first described mortgage, and again, rupees 355-2 annas when the estate was finally purchased: an entry to this effect, he says, was made in their general accounts.

While the case was pending before the lower court Byrub Chunder Roy Chowdry died, and his representatives became his wife, Kyllass Basseenee Debea, (as wussee of his minor children,) and Ram Chunder Roy Chowdry.

The additional principal sudder ameen dismissed the claim, for he did not consider it proved, either from the evidence of witnesses, or documents filed, that the original plaintiff Byrub had bought the property conjointly with Meis Chunder Roy Chowdry; and

the additional principal sudder ameen observed that one Ram Rutten Ghose, a witness of the plaintiff, deposed that Meis Chunder alone had possession of the property during his life-time, and, after his death, that his widow, Seeboo Soondree, succeeded to it. The additional principal sudder ameen also considered that, if the plaintiff's claim were true, a claim of some kind would have been preferred, during the trial of the action brought by Nurnarain Banerjee.

Plaintiffs appeal, repeating the allegations made in the plaint; further they state that, while the case was pending in the lower court, they applied to have the matter settled by arbitration, but the respondents would not consent. They complain that the additional principal sudder ameen did not compel the production of the accounts of receipts and disbursements, of the various properties stated in this case to be jointly in possession of both parties. They submit that with regard to the pledge of a part of the property in dispute, as security to Government, they were in ignorance of its being pledged; and as to their not coming forward in the case of Nurnarain, they need not have done so, because, not having been parties in that case, they could not have been affected by any decision passed in it. Further they submit that the receipts of rent, paid by Meis Chunder Roy Chowdry, and his heirs, for the hereditary farm, were not satisfactorily proved, as only one gomastah gave evidence that those receipts were genuine, whereas the additional principal sudder ameen should have called for the evidence of others of the gomastahs who signed the receipts; and they allege, that, pending the trial in the lower court, Seeboo Soondree, the respondent, offered to adjust the matter with them.

In the lower court the plaintiffs filed no documents in support of the claim advanced. Five witnesses gave evidence on their behalf. Bunmally Poorkyet gave evidence regarding the dis-possession of the former plaintiff Byrub Chunder Roy Chowdry, and the witness stated that Byrub, and his brother Meis Chunder, as well as his nephew, Kallymohun, were proprietors of the hereditary farm. He stated that he was a pyke in the service of Byrub, the former plaintiff, and that, going to assist others employed by that person for the same purpose, ten or twelve men came forward on the part of Meis Chunder Roy Chowdry, and threatened to assault them, unless they desisted from collecting rent. But he cannot specify when this was done. He only says it was antecedent to the year 1240. He cannot particularise, or name, any year at all previous to 1240, and can only name two inhabitants of Chuck Hutta, though he says he was a pyke employed to collect rent for the period of three years, nor can he state the boundaries of the property. I have also to remark that his evidence is at variance with the plaint; wherein it is stated that Byrub himself, having gone to collect the rent, was turned off the

property, whereas the witness makes no mention of Byrub's having gone to aid in the collection. The next witness, Rajee Joogee, who is adduced to prove Byrub's dispossession, does not say that that person was present (as the urzee or plaint states) when the party of Meis Chunder Roy threatened and turned those of the former off the estate. This witness does not specify any period when this was done, nor can he say who were Byrub's partners in the estate, and, with regard to that person's right to any share, he only heard Byrub mention that he had that right himself. Another witness to prove Byrub's right to the portion of the property in dispute, is Durpnarain Sircar. He says he heard that the property was bought with the joint funds of the three brothers, Hur Chunder, Meis Chunder, and Byrub Chunder; and, in describing the circumstances connected with the second mortgage by Ram Hurry Mitter, says that it was during the lifetime of Hur Chunder Roy Chowdry in Aughun 1235 B. S., though in the plaint it is alleged that the second mortgage was effected not until Meis Chunder's death, which took place subsequent to that of Hur Chunder. He says he was employed as nyeb by the three brothers, but he cannot state the date of his being so employed, nor can he say with whom the accounts of receipts and disbursements, relating to their common property, are now lodged. He deposes that he is now in the employ of Kallymohun the defendant, respondent, and that he has frequently given evidence in courts of justice, how often he cannot remember. A fourth witness of the plaintiffs, appellants, by name Ram Rutten Ghose, says he was a witness to the kutkobala referred to in the plaint, and deposes that the sons of Ram Hurry Mitter sold the hereditary farm *only to Meis Chunder Roy*, and the witness says he was employed on behalf of the buyer and sellers of that property to have the final kubala, or deed of sale, registered. He says he knows nothing of any offer on Seeboo Soondree's part to adjust this case. The fifth witness of the plaintiffs, appellants, deposes that he is unable to say how the estate was purchased, or by whom, and that he understands Meis Chunder Roy eventually obtained possession of it. He is unable to state whether there are any accounts relating to the estate or where they may be.

On behalf of Nurnarain Banerjee, the defendant, respondent, Guncisram Poorkyet (who is referred to in the evidence of Bunmallee Poorkyet, plaintiffs' witness, as being a gomashtah of the estate in dispute) deposed to the execution of the kubala, the sale of the property by Ram Hurry Mitter's sons to Meis Chunder Chowdry, to that person's getting and holding possession of the property, and to his being succeeded by his wife, Seeboo Soondree. He further says that after his discharge from Meis Chunder's service he was employed by Kallymohun, the respondent, to whom rent was paid by Meis Chunder Chowdry, for the hereditary

farm. He identified the receipts granted for such rent, during his own incumbency, and during that of others, gomashthas, who succeeded him. Another witness, Geereedhur Mundle, on the same side, stated that the kubala or deed of sale was granted to Meis Chunder Roy, who became the sole possessor of the hereditary farm, and on his death Seeboo Soondree succeeded to it, and paid the rent. Manick Mundul adduced by both the respondents, Seeboo Soondree and Nurnarain, supports their statements. So does Narain Hazra, a ryot residing on the land, as does also Hulodhur Manzee, likewise a resident on it.

The documentary proof put in on the part of the defendants, respondents, Nurnarain and Seeboo Soondree, consisted of the kubala, granted to Meis Chunder for this estate, by the sons and heirs of Rama Hurry Mitter, dated the 26th of Aughun 1238. It bears an endorsement showing that the disputed property had been pledged by Meis Chunder Roy, as stated in the answer to the plaint, to Government; and this kubala was made over to the Government officers at the time of pledge. Another document put in, to support respondents' statements, is a fysala dated the 5th of September 1843, wherein rupees 4,112 are decreed to Nurnarain the defendant, respondent, in satisfaction of a sum of rupees 3000 (with interest) lent on the mortgage of this property,—the lender being Nurnarain, and the borrower, Meis Chunder Roy Chowdry. Besides there are the receipts for rents paid by Meis Chunder and Seeboo Soondree to the talookdars under whom this hereditary farm is held, which have been sworn to by the gomashtah.

The property in dispute is of a kind which it is not now usual, in most zillahs, to create under such a designation; it consists of a grant, at a perpetually fixed jumma, by the Government, as a mouroosee izara, and the izardar pays rent to the present proprietor. The plaintiffs, appellants, in this case, the defendant, respondent, Kallymohun, and the defendant, respondent Seeboo Soondree, are the now talookdars of the talook, within which this mouroosee izara is situated, and to them the respondent, Seeboo Soondree, pays rent as mouroosee izardar.

On considering the evidence—the only proof adduced by the appellants—I cannot regard it as sufficient to support the claim they have made. If, as they say, the property was bought with the joint funds of Hur Chunder Roy Chowdry, Meis Chunder Roy Chowdry, and of Kallymohun Roy Chowdry, it was very requisite that Byrub Chunder and Kallymohun, as guardians of their own interest, should have taken some acknowledgment to that effect from Meis Chunder at the time of purchase, and not have left their claim to rest on the unsatisfactory proof I have noted. If their, appellants', claim were proper, I think some petition indicative of it, would have been put in by them while the action

brought by Nurnarain Banerjee was pending, for upwards of seven months, in the principal sudder ameen's court; and I cannot but consider, when the property was pledged by Meis Chunder Roy Chowdry as security to Government, on behalf of Esan Chunder Chatterjee, that the plaintiffs, appellants, would have come forward with a claim in accordance with the advertisement issued for such claimants. As to requiring documentary proof from the defendant, respondent, Seeboo Soondree, that the money to buy this estate was provided by Meis Chunder, Byrub, and Kallymohun, and the prayer of the appellants to require from Seeboo Soondree accounts to prove this, I cannot learn from the witnesses that any such accounts exist, and the respondent's pleader, on being questioned, states that there are none. I consider too that if the appellants had really been dispossessed of this estate, in 1240, by Meis Chunder Roy, they would not have delayed to bring this suit until 1250 B. S.; or ten years after the alleged dispossession. I therefore, considering the matters I have adverted to, dismiss this appeal.

THE 11TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

*Appeal from the decision of Syed Oosman Ally Khan Bahadoor,
Additional Principal Sudder Ameen, passed on the 22d of
April 1845.*

Mahomed Daim and Deanut Oolla, paupers, (former Plaintiffs,)
Appellants,

versus

Tajooddeen Mahomed, Mahomed Cassim, and Golam Hyder, and Mahomed Tyeb, (former Defendant,) deceased, pending this appeal, now represented by Daad Ally, Hoojutoolla, Mahomed Danish, Bahadoor Ally, Rohutoolla, Itrazolla, his sons; also Sumsoodeen, Wuzeerooddeen, Husnool Beebee, Gulam Akbur, Gulam Athur, Chinta Beebee, Murium Beebee, and others, Respondents.

FOR possession of 72 beegahs, 9 biswas, $1\frac{1}{2}$ chks., being the 3 annas, 5 gundahs share of 356 beegahs, 13 biswas, $\frac{1}{4}$ chk. of keraj and lakeraj land, situated in Raiegotchee and other mouzahs in the pergunnahs of Calcutta and Anwurpoor, together with wassilaat; the whole valued at rupees 2875, 7 annas, 3 gundahs, 13 kgs., and 15 teel.

The plaintiffs claimed as sons and heirs of Toka Beebee, who was the daughter of Neeloo Mundul, son of Goburdhun Mundul. Goburdhun's heirs were, plaintiffs say, Neeloo, above named, Sunnoo, Madhoo, and Tazoodeen. The last three are ancestors of the defendants, Cassim, Hyder, and Tyeb, thus—Cassim and Tyeb

are the sons of Madhoo, and Golam Hyder is the son of Mahomed Alum, son of Sunnoo above named. Plaintiffs state that their mother, after the death of Neeloo Mundul, and his wife, Poosa, succeeded to his, Neeloo's share, and died in 1239. They, plaintiffs, succeeded her, and held possession of their inheritance until the following year, when they were dispossessed by the defendants. They now sue to recover their rights.

The reply of Mahomed Cassim and Mahomed Tyeb, who only of all the defendants filed an answer, is to the effect that they are sons of Madhoo Mundul, son of Goburdhun Mundul; that the landed property left by Goburdhun only consisted of *keraj* (or rent-paying land) comprehending 50 beegahs, $1\frac{1}{2}$ biswas, and *lakeraj*, 5 beegahs and 15 cottahs, instead of the quantity of 356 beegahs, 13 biswas, $\frac{1}{2}$ *chk.*, as stated by plaintiffs. The rest was acquired by Madhoo, their father, Tazoodeen, and Sunnoo, sons of Goburdhun, after that person's death, and subsequent also to the death of Neeloo, the grandfather of the plaintiffs. Neeloo, the defendants say, died in 1187 B. S. and Toka, the mother of plaintiffs, died in 1221 B. S. They urge that the plaintiffs' mother, Toka, never possessed any of the property in dispute, but she and Poosa her mother, who was Neeloo's widow, sold their right in the above specified (55 beegahs, $16\frac{1}{2}$ *cs.*) quantity of land to Madhoo, Tazoodeen, and Sunnoo, in 1196 B. S. The portion thus sold was 8 beegahs, 14 *ks.*, 7 *chks.*, and 5 *gs.* Defendants further urge that in 1810, their father, Madhoo, brought an action against Tazoodeen, Sunnoo, and others, claiming re-possession of his share (from which he had been ousted) of their joint property, including that under litigation; that that case, from the stage of its first institution until decided on special appeal by the Sudder Court, was pending twenty-one years. Neeloo's heirs, Poosa and Toka, were not sued in that action, nor did they set forth their right by petition, as undoubtedly they would have done had they been, as plaintiffs say, in possession when the action was brought. Defendants state further that the statute of limitations bars the claim, as Toka died in 1221 B. S., and since then the plaintiffs never had possession.

The plaintiffs in their replication state that no property, as alleged by defendants, was sold by Toka or Poosa, and that as to there having been nothing done by Toka in the case brought by Madhoo, referred to in defendants' answer, in 1810, there was a reservation, in the decision passed, that the rights of Neeloo's heirs were not to be in any way compromised thereby. Pending that case, plaintiffs say, that the brothers of Neeloo, their grandfather, managed the property of Toka, his, Neeloo's daughter, their mo-

ther, with her consent. In a supplementary plaint, given in after the defendants' answer, plaintiffs admit that the property which Neeloo inherited, and his three brothers also, from Goburdhun, was only 55 beegahs, 12 ks. 8 chs. of land, but the rest, of which they now claim their portion, was acquired with the funds of Madhoo, Tazoodeen, Sunnool, Poosa, Neeloo's widow, and Toka, his daughter, plaintiffs' mother. The means to acquire this property were obtained from the rent of their hereditary property, and from profits of trade, carried on by all the sons of Goburdhun, the ancestors of the parties, as well as by Toka.

The additional principal sudder ameen dismissed the case. He was of opinion that Toka's (mother of plaintiffs') possession of the land was not proved; that, as she had died, in his opinion, long previous, without getting possession, the statute of limitations barred plaintiffs' claim. He considered that it was not proved that the purchase of the land, in excess of the hereditary tenure, was made with the funds of Toka or of her mother Poosa.

From this decision the appellants appeal. They repeat statements made in the plaint; they submit that the prescribed period of 12 years had not elapsed previous to their bringing this action, as stated in the lower court's decision. For they were not dispossessed until 1240 B. S., and they brought this action in 1250. They pray for the deputation of an ameen to ascertain the fact of their mother's, and their own, possession, which application they had made in the lower court, but it was not acceded to.

An answer to the petition of appeal is filed by the respondents, Casim and Tyeb, who repeat that the appellants have no foundation for the claim they advance, and that as Toka, their, plaintiffs' mother, died in 1221 B. S., and as they never after got possession, by the law of limitations they cannot bring this action.

An answer to the petition of appeal was filed also by Sumssoodeen, Wuzeroodeen, and Mussummut Husnool Beebee, who say they are heirs of Kyamoodeen, son of Sunnool, brother of Neelool, also by Golam Akbur, Golam Athur, heirs of Mahomed Hasim, another son of the said Kyamoodeen; as well as by Chinta Beebee and Murrium Beebee, daughters of Alum, son of Sunnool Mundul. These persons say, in support of appellants' statement, that Neelool's heiress was Poosa, his wife, and that the property which descended from her never came into their (the respondents mentioned) possession, and consequently they ought not to have been sued in this case. They aver that the other respondents, Cassim, Tajoodeen, &c., have unjustly got possession of the property of plaintiffs.

On the 18th of August last this case was deferred, and the register of the Sudder Dewanny Adawlut applied to by me, for the original nutthee in the case, referred to in the answer of Cassim and Tyeb,

in order that it might, if possible, from those papers, be ascertained when the mother, Toka, of the appellants, died. The pleader of the respondents stated that it would appear from those papers that Toka died in 1221 B. S.

The appellants filed no documents. They have the evidence of six witnesses who deposed to the grandmother, Poosa, of the appellants, and to their mother, Toka, having successively been in possession of the portion they claim, subsequent to the death of Neeloo, appellants' grandfather. The witnesses say that those two females had their portion of the profits of the estate made regularly over to them by the respondents, and that Toka died in 1239 B. S., the appellants then succeeded her, but were ousted in 1240, by Cassim, the respondent, &c. The witnesses, Shaddoo Mundul, Junglee Mundul, Emandee Mundul, and Jureef, depose on the part of respondents to Toka, daughter of Neeloo, and mother of appellants, having sold her share of the property (8 beegahs, 14 kottahs, 7 chattaks, 5 gundahs) which she inherited, to Tajoodeen, Sunnoo, and Madhoo, (Neeloo's brothers,) the last named being father of the respondents, Tyeb and Cassim. The witnesses say that the three first named carried on trade, independent of Poosa or Toka, by which trade they acquired profit and means to purchase property, besides that which descended to them from Goburdhun, and to which, the witnesses state, the appellants can have no just claim.

On referring to the papers obtained from the Sudder Dewanny Adawlut, I find no mention of the date on which Toka, the appellants' mother, died; but considering that the appellants' claim is only supported by the evidence of the six witnesses I have referred to, that they have no documentary proof of their mother's possession of the property they claim, or of her having acquired the means, by trade, to purchase property (among that claimed) besides what she is alleged to have inherited from Neeloo, the length of time, nearly eight years, which the appellants permitted to elapse before they instituted any suit after their alleged dis-possession, I cannot think that there exists any necessity to depute an ameen to make a local enquiry, and see no reason to interfere with the decision passed by the lower court.

THE 11TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Mr. J. Weston, Sudder Ameen, passed on the 23d of May 1846.

Hurradhun Koondoo and Gour Mohun Dutt, (former Plaintiffs,) Appellants,

versus

Ram Lochun Pal, Kala Chand Pal, and Bydenath Pal, (Defendants,) Respondents.

FOR rupees 316, on account of land fraudulently sold.

This action was brought to have a collusive sale reversed, which plaintiffs alleged had been effected by Ram Lochun, the defendant, to Kalachand Pal, to the extent of 1 beegah, 15 kottas, 3 chettacks, of land, including a house and tank. Plaintiffs stated that they had formerly got a decree for 386 rupees against Ram Lochun, the defendant, and they caused to be attached 3 beegahs, 10 kottas, (on which was a tank and house,) supposed to be that person's property, in execution of that decree. Kalachand, the defendant, on this attachment taking place, claimed 1 beegah, 15 kottas, 3 chettacks, saying he had purchased that quantity of the land attached, and Bydenath claimed 1 beegah, 12 kottas, as his property. These persons' claims were both admitted, when they were enquired into, in the sudder ameen's court. Now the plaintiffs bring this regular action, to procure the reversal of what they allege was a collusive alienation of the land, 1 beegah, 15 kottas, 3 chettacks, to defeat their just claims against Ram Lochun. Plaintiffs state they merely sued Bydenath "*pro forma*" because he had been formerly sued by Kalachand, in a case brought to recover a portion (13 kottas) of this land from which Kalachand said Bydenath and Ram Lochun had dispossessed him, after the latter had disposed of it to him, Kalachand.

In answer Kalachand denied that the sale was collusive, and urged that on the 7th of Falgoun 1249 B. S., he bought the land, claimed by plaintiffs, for rupees 495, from Ram Lochun, and obtained possession of it; but subsequently, Ram Lochun and Bydenath, the defendants, dispossessed him of 13 kottas of that land, which he recovered, by a decree of the court of the moonsiff of Russa, on the 16th of August 1844. In the court of the sudder ameen, his, Kalachand's, right was upheld, when the plaintiffs attempted to have his purchased property disposed of in execution of this, plaintiffs', decree given against Ram Lochun.

Bydenath, the defendant, replied that he had not any thing to say to the land claimed by the plaintiffs.

The sudder ameen dismissed the claim. He was of opinion that the sale to Kalachand was proved not to be collusive, and that

according to Construction No. 588, alienation of the property, by Kalachand to Ram Lochun, was valid and admissible.

In appeal the appellants repeat the statements made in their plaint, and add that the evidence of three witnesses, examined on their behalf in the sudder ameen's court, proved their case. Also, they submit, that it will be apparent from a comparison of the signature of Bydenath, on the vakalutnamah given by him in the case referred to (whereby Kalachand was put in re-possession of the 13 kottas he had previously bought) in the plaint, and answer, that that signature, and the signature attached to the vakalutnamah now granted by Bydenath, in this case, are quite different, and that the former is not Bydenath's genuine signature; from which appellants argue that the former is a forgery effected by Ram Lochun. The appellants put in a copy of a roobikarree of this court, dated the 29th of May last, in the case of Hur Chunder Lahoree, wherein it is ordered that a property, attached in execution of a decree of court, is to be sold, because it appeared a collusive sale, to defeat the decreeholder's just claim, had been effected. The appellants pray that the report of an ameen, deputed in the case of execution of decree sued out by these appellants to realise their 386 rupees from Ram Lochun, the respondent, be read, in hearing this appeal.

In the sudder ameen's court the plaintiffs, appellants, adduced three witnesses, Dwarkanath Mundul, Hurree Lushker, and Kalachand Khan. They cannot prove the collusive sale by Ram Lochun to Kalachand, and it would, in my opinion, be a most difficult thing for them to do for they are merely ryots, who do not show that they have any intimacy with the parties in this case; and it is most improbable that any expression of intentions, or innuendo, regarding the collusive sale, would have been allowed by Ram Lochun to escape him, before people of this class, or any one else perhaps. As to the signature of Bydenath on the two vakalutnamahs mentioned in the urzec of appeal, I cannot see how the appellants can benefit, even were the signature, in the first given vakalutnamah, a forgery. Bydenath has really, as plaintiffs, appellants admit, nothing to do with this case, and all I have to consider is whether the sale of 1 beegah, 15 kottas, 3 chettacks of land, by Ram Lochun to Kalachand, was collusive or not. The roobikarree of this court, of the 29th of May last, cannot be regarded as a precedent in this case, for it has reference to a miscellaneous case, arising from a claim preferred in an execution of decree, and the circular letter of Sudder Dewanny Adawlut of June 10th 1842, rules that in these cases the only point to be considered, when claims of a positive sale are advanced, is the fact of possession previous to attachment. The ameen's report, cited by the appellants, is insufficient to prove collusive alienation of the ground in dispute;—for though that report is favorable to the appellants, it was reject-

ed and disapproved of by the authority to whom it was submitted, inasmuch as it was at variance with the evidence of the witnesses examined by the ameen. Under the circumstances I have considered, I can see no reason for disturbing the decision come to by the lower court, and dismiss the appeal.

THE 16TH NOVEMBER 1846:

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Munmohun Baboo, Moonsiff of Nowabgunge, passed on the 18th of June 1846.

Nundoram Doss, (former Plaintiff,) Appellant,

versus

Prawn Mundul, Mudden Ghose, Daibee Doss, Joyenarain Bundo-
padhya, and another, (former Defendants,) Respondents.

FOR possession of six beegahs of keraj land, with wassilaat.

The plaintiff set forth that plaintiff, along with the defendant, Mudden Ghose, purchased the two beegahs of ground in the mouzah of Kurna, pergunnah Calcutta, with trees, tanks, &c., thereon, from Daibee Doss, the defendant, on the 17th of Joite 1248 B. S., and for which he paid rupees 18. In that year, in the month of Assar, the defendant, Prawn Mundul, with whose acts Mudden Ghose connived, dispossessed the plaintiff of two beegahs of land. Now plaintiff sues for the ground, six beegahs, which is his right, in virtue of his purchase with Mudden.

The defendant, Prawn Mundul, claimed the land from which the plaintiff alleged he was dispossessed, as he had purchased it from the before mentioned Daibee Doss, from whom he received a kubala, or deed of sale, bearing date the 12th of Poos 1246.

Daibee Doss answered that the sale to plaintiff was the real and only one. The zameendar, the defendant, Joyenarain, answered that the ground in dispute was part of the plaintiff's tenure, who had bought it from Daibee Doss.

The case was nonsuited by the moonsiff on the 15th of March 1844, because the plaintiff was written on a stamp of inadequate legal value as the moonsiff erroneously supposed; but on appeal, the acting judge directed the moonsiff to proceed with the trial, which was done, and the case was decreed. From this award Prawn Mundul appealed, and the case was referred to the additional principal sudder ameen, who remanded it for re-trial, in order that evidence to the kubala or deed of sale, executed by Daibee Doss in plaintiff's favor, might be taken; for the moonsiff only came to a decision, regarding the plaintiff's purchase, from a perusal of the answers of the defendants Daibee Doss and Joyenarain, (which supported the plaintiff's statement,) and because

he, the moonsiff, was dissatisfied with the evidence adduced in support of Prawn Mundul's, the defendant's, purchase. The moonsiff only took evidence regarding the dispossession of plaintiff by Prawn Mundul.

Accordingly, on taking the evidence of two witnesses (the only surviving ones) to the deed of sale filed by plaintiff, the moonsiff considered their testimony contradictory, and dismissed the case.

An appeal is preferred wherein the plaintiff, appellant, states that he can produce other evidence, besides that of those persons whose names were actually attached to the deed of sale. Appellant prays to have the evidence of those persons taken, and that an ameen be deputed to make a local enquiry regarding his right to the land.

Referring to the evidence which has been taken on two occasions, on the second and third trial of the case in the moonsiff's court, I observe that on the second trial the witnesses say the appellant was dispossessed by the respondent, Prawn Mundul. They merely say he was dispossessed. They do not mention of what quantity of land, or how, or on what date. And they add that Prawn Mundul cut down bamboos, growing on the ground, subsequently. Other witnesses of the appellant examined on the third trial, by name Govind Chunder Mookerjee and Mookteram Bagdee, deposed to the appellant having purchased the land, as he set forth; but they contradict each other as to the place where the kubala or deed of sale was written—one, Govind, saying it was written in the house of Hurnath Banerjee, the other, Mookteram, alleging that it was written in the house of the witness Govind; moreover one of the witnesses, Mookteram, only, deposes to seeing any consideration given for the purchase. The other witnesses to the appellant's kubala are dead, and I do not doubt that the appellant could bring forward plenty of witnesses, ready to swear to the deed, besides those whose names are attached to it. It is not necessary, in my opinion, taking into consideration the evidence I have noticed, to call for more testimony, or to make a local enquiry by an ameen. There are two witnesses, Muddoo Chowkeedar and Lall Chund Mundul, who depose to the respondent Prawn Mundul having had possession of the land, in virtue of his purchase, according to the deed of sale executed by Daibee Doss; and that deed, as well as the payment of the price of the land included therein, 27 rupees, is proved by the evidence of Kadir Mundul and Zumeer Sheik, which is without contradiction. Under all the circumstances I have referred to, I see no reason to interfere with the lower court's decision.

THE 17TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

*Appeal from the decision of Mr. J. Weston, the Sudder Moonsiff,
passed on the 26th of June 1846.*

Doorponarain Purryel, (former Defendant,) Appellant,

versus

Shumud Allee, Tindal, (former Plaintiff,) Respondent.

To recover rupees 81, 10 as. 13 gs. 2 dcs. 2 krants, advanced for the purchase of paddy.

The plaintiff stated that he had advanced 51 rupees, on the 8th of Assar 1252, for which he was to receive from defendant, in Maug following, 15 pallees (each pallee is 8 seers) of paddy per rupee: accordingly 30 pallees were made over to the plaintiff on the 12th of Maug 1252. But the remainder not being delivered to the plaintiff, he brings this action, estimating the price of paddy at 9 pallees per rupee, which was the bazar rate during the month of Maug, the stipulated month of delivery; and he alleges he is entitled accordingly to 765 pallees, which he values as set forth above. He states that he applied to the defendant to act up to his agreement, and deliver the grain.

The defendant denies ever having taken money from the plaintiff under an agreement as he states. He says that this action is brought in consequence of the defendant, and his partners in the land he holds, having forcibly expelled the plaintiff, when trespassing on their ground, and fishing in their tank.

The moonsiff decreed the case, as he was of opinion that the three witnesses adduced by the plaintiff to the agreement, as alleged, proved his claim, inasmuch as they deposed to the advance being made; and two others deposed to the plaintiff having applied to the defendant for the money on account of the advance. The moonsiff discredited the evidence of defendant's witnesses, as their testimony was contradictory, and he considered too that if the plaintiff had been trespassing, as the defendant pleads, and been forcibly ejected from the defendant's ground, there would be proof of these circumstances in the fouzdarree court, whereas no document, tending to show that this statement was true, was produced.

In appeal appellant again submits that the action has been brought only on account of plaintiff's inimical feelings, which were engendered in consequence of respondent's being forcibly turned off, when fishing in appellant's tank. He urges that no one, as plaintiff alleges he did, during the month of Assar, the ploughing season, ever gives an advance for grain, especially when, as in this case, the grain was to be delivered in Maug, so many months after.

As the alleged agreement was verbal, the evidence must be examined with great care. Referring to the depositions of the witnesses who have deposed on the respondent's, plaintiff's part, I observe that the witness Cassinauth Chowkeedar states that in Assar (he can't mention the date) 1252, rupees 51 were advanced by respondent, plaintiff, for grain to be delivered in Maug, at the rate of 15 pallees per rupee. He says that plaintiff, respondent, brought the money, and placed it on a mat, where appellant counted it. The next witness, Bunmally Dulwye, says that the defendant, appellant, and not respondent, was the person to place the money on the mat. He says he lives close to the residence of plaintiff, appellant, but is unable to state where that residence is, and adds that in Maug 1252, 30 pallees of grain were delivered by appellant, defendant, to respondent. He admits that he has several times deposed before in courts of justice. Esuff Khalassee, contradicting the first witness, says that defendant, appellant, was the person to place the money on the mat, and, disagreeing with the second witness, (the first witness is silent on the subject,) states that it was in Pose 1252 that 30 pallees were delivered by defendant, appellant, in part redemption of the agreement he had made. Two witnesses are adduced by the plaintiff, respondent, to prove that application had been made by him to the appellant to fulfil his agreement. Plaintiff states in his plaint that he applied to defendant, appellant, for the grain; but the witness Jobraj Ummuldar deposes that it was for the money advanced he applied to the defendant, appellant. Rooplaul, another witness, says he was present on the occasion, and says it was for the money application was made, by plaintiff, respondent, to the appellant, stating that (which Jobraj does not specify) respondent particularised 51 rupees, as the amount he claimed.

These persons' evidence, as I have observed, is at variance with the plaint. Besides, it seems to me improbable that plaintiff, respondent, in Chyte (the 20th of that month according to the evidence of Rooplaul) 1252, would have been content with 51 rupees, when on the 28th of that month, the date of plaint, he claims 81 rupees, 10 annas, 13 gundas, 2 cowries, 2 krants; and though plaintiff says 30 pallees were delivered to him, his witnesses make him to have verbally claimed the amount originally advanced without making any deduction for the quantity delivered. It is not, in my opinion, the practice, as the moonsiff supposes, for the people, in every case of petty assault or trespass, to complain in the fouzdaaree court; and, I think, there is not any thing improbable in defendant's, appellant's, statement that a trespass, by plaintiff, respondent, and an assault or forcible ejectment by defendant, appellant, did take place, though no document from the magistrate's court has been filed in support of this statement.

Five witnesses, on appellant's part, depose to this statement being true, and to enmity, on this account, existing between the parties. Under the circumstances I have noticed, and as the plaintiff, respondent, has no document specifying the agreement, saying it was merely a verbal one, I think it just to decree this appeal.

THE 18TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Mr. J. Weston, Sudder Moonsiff, passed on the 30th of June 1846.

Sreemuttee Heeramunee Dossee, Ahirreenee, (former Defendant),
Appellant,

versus

Neelmunee Dallee, (former Plaintiff,) Respondent.

FOR possession of 18½ kottas of birmooter land, valued at rupees 148.

The plaintiff brought this suit for possession of the above quantity of ground, saying he had bought it from the defendant Heeramunee on the 12th of Bysack 1251 B. S., paying the sum for it at which he has laid the action. The land is situated at Kallee-ghat, and plaintiff holds the kubala of the ground, which had been granted to Heeramunee's husband, when purchased by him from the former proprietor. This is a registered document. Without registering the kubala granted to him by Heeramunee, plaintiff states, and not having obtained possession of the ground he had purchased, he departed for Burdwan, shortly after he had made the purchase. On his return he applied to Heeramunee to get the deed of sale registered, and for possession of the land. This she refused, and now he brings this action. In a supplementary plaint, plaintiff sued Doorgapersaud Roy Chowdry, in consequence of Heeramunee's answer.

The defendant Heeramunee in answer denied that she sold the ground to the plaintiff; but that, so far from doing so, she did dispose of it to Doorgapersaud Roy Chowdry, on the 18th of Assin, to whom she made over a portion of her title deeds, and whose deed of sale was duly registered. She says that Tarapersaud Roy Chowdry has got up this case, through the plaintiff, as he lives close to the ground, and is unwilling that Doorgapersaud, towards whom he bears enmity, should have the property in his possession. As to the old kubala, which plaintiff possesses, Heeramunee says he has fraudulently obtained it from one Fukeer Chand Mistree, to whom she had pledged the land, assigning him then her title deeds in consideration of a loan which was not entirely repaid, and therefore the kubala was retained by Fukeer

Chand. She adds that when Doorgapersaud bought the ground she made over to him an old deed of sale for trees and a tank on the land.

Doorgapersaud Roy Chowdry supports this statement of Heeramunee, and alleges that he holds the deed of sale drawn out according to the purchase made from her. This deed was duly registered. The sale took place in Aughun 1251. He alleges he has the document referred to in the last part of Heeramunee's answer.

The moonsiff dismissed the claim for possession of the land, being bound, he considered, by Act XIX. of 1843, to give the preference to the registered deed of sale filed in support of defendants' claim, which purported the sale to have been made by Heeramunee to Doorgapersaud. But, in accordance with the case decided by the Sudder Dewanny Adawlut, (that of Zalim Sing and others, appellants, *versus* Tufuzul Hussein, respondent,) on the 30th of June 1845, he decreed 148 rupees to the plaintiff, as he considered that the defendant, Heeramunee, had fraudulently obtained that sum by selling the ground in dispute to the plaintiff, in the first instance, and afterwards to the defendant Doorgapersaud.

Heeramunee prefers an appeal, repeating that no sale, or attempt at sale, by her to plaintiff, respondent, Neelmunee, ever had taken place. She urges that the stamp on the plaint is not of legal value, for the collections are shown, by the evidence taken on the subject, to be in amount more than eighteen times the value of the stamp used.

With regard to the value of the stamp it is rupees 148; and the ameen, who was deputed by the moonsiff to make enquiry as to the amount of the rent of the land, reported that the yearly sum of the rents was rupees 5, being for eighteen years rupees 90, thereby showing the price of the stamp (rupees 148) used to be rupees 58 in excess of the prescribed amount. If this valuation, by the ameen, was deemed improper by the appellant, she should have submitted her objections in the lower court, as ruled in paragraph 3 of circular letter of Sudder Dewanny Adawlut, dated 20th of August 1844, instead of doing so now in appeal. As respects the purchase of the land by the respondent, Neelmunee Dalle, I observe that the evidence of Mudden Chowkeedar, Koosye Sing, Rampersaud Chowkeedar, and Boota Bagdee, goes to prove that he paid rupees 148, for the ground in dispute, in the month of Bysack 1251, to the appellant Heeramunee. A kubala, these witnesses say, was written out by Beesoo Mistree, in the house of Fukeer Chand Mistree, before mentioned, to which appellant attached her mark, and it was made over to the respondent Neelmunee. These persons say that the kubala dated the 12th of By-

sack 1251 B. S., which is filed by Neelmunee, is the one they have described, and they say further that the ground had been pledged by appellant to Fukeer Chand Mistree, on consideration of a loan of rupees 50 granted by him to appellant. Also they state that rupees 79 and odd annas were paid by appellant, on account of that loan and interest, to Fukeer Chand at the time of the respondent's purchasing the ground, when Fukeer Chand relinquished to him the old kubala, or deed of sale (filed) granted to appellant's husband, Harro Ahirree, by the person, Rajkisten Banerjee, who had sold it to Harro.

To prove that Fukeer Chand Mistree had been paid only a portion of his claim, and consequently that he retained the old kubala given to Harro, two witnesses are adduced by the appellant. They state that on the 8th or 9th of Bhadoon, 80 rupees, less odd annas, being ascertained to be due with interest to Fukeer Chand, rupees 70 were paid to him by appellant. No title deeds were then given back to appellant, but a receipt was granted by Fukeer Chand for the sum paid, which was identified by these witnesses.

To prove the sale to Doorgapersaud Roy Chowdry, Oodyenarain Baboo, Ram Chunder Patter, and Luckeenarain Ahirree depose that a kubala was written out in favor of Doorgapersaud, in that person's house, for this ground, on the 16th of Aughun 1251 B. S.; and then rupees 126 were paid by the purchaser to Heeramunee, who attached her mark to the deed. These witnesses say that Doorgapersaud was put in possession by Heeramunee the day after he bought the ground. Oodyenarain further deposes to the deed having been duly registered by the register of deeds.

Referring to the record of this case in the lower court, I observe that the respondent, Neelmunee, included, among the list of his witnesses to be subpoenaed, the names of Becsoo Mistree (the person who, the witnesses say, wrote out the kubala or deed of sale of this ground) and of Fukeer Chand Mistree, who held the appellant's former kubala and to whom the land in dispute was at one time pledged. Subpoenas were attempted to be served on those persons, but ineffectually. Their evidence, particularly that of Fukeer Chand Mistree, would have been of much importance in this case. Judging from the proof however adduced by the plaintiff, respondent, I am of opinion that the sale to him of the ground in dispute, was really made by the appellant for rupees 148. The evidence of the witnesses who have deposed on plaintiff's, respondent's, behalf prove this, and he has filed the deed of sale which appellant executed in his favor. Besides he has produced the original deed of sale executed by the person, Rajkisten Banerjee, from whom Heeramunee's husband, Harro Ahirree, bought the ground, which document was deposited as collateral security with Fukeer Chand Mistree, when he lent

money, on the pledge of the land, to the appellant. There is not the slightest proof that this document, through collusion on Fukeer Chand's part, came into the respondent's hands. The appellant asserts that it did, and that Tarapersaud Roy Chowdry (Doorgapersaud's brother and notorious enemy) has instigated the plaintiff, respondent, to bring this action; but neither the appellant or Doorgapersaud have adduced any proof of such collusion or instigation. To my mind it appears plain, as Neelmunee's, respondent's, witnesses say, that on the payment of the money by him to the appellant, she paid 79 rupees and odd annas to Fukeer Chand in full of all demands, and on this he made over the document he held to Neelmunee. It seems to me improbable, no reason being shown for his doing so, that Fukeer Chand would relinquish that document, unless he had received his full claim; and on this account I disbelieve the evidence of the two witnesses, Govind and Birjoo-mohun, adduced by the appellant, to prove that 70 rupees only of her debt to Fukeer Chand was defrayed, who therefore retained the old kubala, until the whole should be liquidated. But I see no reason to discredit the evidence of the witnesses of the second sale to Doorgapersaud Roy Chowdry. I fully believe that this sale took place after the appellant had sold the ground to Neelmunee, and been paid by that person for it; and, hard as the decision is, I concur with the moonsiff that the deed of sale, filed by Doorgapersaud, being registered, must, according to Act XIX. of 1843, have a preference in this case, over that executed in favor of the respondent, Neelmunee. He, I think, only failed to have his deed registered through ignorance of the civil law, common to 99 per cent. of his class, but a knowledge of which is quickly attained by such litigious persons as Doorgapersaud, (in saying that he is so I refer particularly to the case of that person plaintiff, *versus* Tarapersaud Chowdry, decided in this court on the 9th of July 1845,) and I regret the more, therefore, that the law will not admit of my awarding the respondent the price of the ground which he paid to Heeramunee, as the moonsiff has done. In deciding that the respondent was entitled to that sum, according to the precedent published in page 213 of the Sudder Court's Decisions for 1845, (Zalim Sing and others, appellants, *versus* Sheik Tufuzul Hussein,) I consider that the moonsiff came to an erroneous judgment. In the Sudder Court's decision quoted, it was declared that the proprietary right of the land therein disputed was vested in the plaintiff, respondent, and because of its having been so vested, he was declared entitled to any surplus proceeds of sale deposited in the treasury of the collector of revenue, the estate which formed the cause of action having been sold, *pendente lite*, for arrears of revenue due to Government.

But, in the present case, the moonsiff has properly declared the proprietary right not to have been vested by law in the respondent

Neelmunee; and therefore, I consider, it cannot be regarded as corresponding with the one the moonsiff relies on ; moreover, as the plaintiff, respondent, only sued for possession of the property, and not to recover the price he had paid for it, I am of opinion the moonsiff should not have awarded the price. It is ruled by the circular letter of the Sudder Dewanny Adawlut, No. 33, dated September 13th 1843, that matters, not set forth in the pleadings, are not to be taken cognizance of by judicial functionaries, and, as no demand has been made for the price, I reverse the lower court's decision which has awarded it. The respondent did not appear on notice being served on him, and has consequently incurred no costs in this court, but, looking at the circumstances of this case, I deem it proper to make the appellant pay the costs of appeal.

THE 19TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

*Appeal from the decision of Mr. J. Weston, Sudder Moonsiff,
passed on the 13th of June 1846.*

Indernarain Haldar and Kumlachurn Haldar, (former Defendants,) Appellants,

versus

Takoorannee Dossee Debea, (former Plaintiff,) widow of Hurchunder Haldar, deceased, and mother of Bootnauth Haldar and of Neelmunee Haldar, minors ; also Chundee Churn Haldar, Joyegopaul Haldar, and Anund Chunder Haldar, (former Defendants,) Respondents.

FOR rupees 148-9-14, lent on the mortgage of land.

The plaintiff stated that Oodyenarain Haldar, Indernarain Haldar, and Raj Chunder Haldar, mortgaged 1 beegah, 16½ kottas of birmooter land on the loan of 100 rupees, (by her late husband Hurchunder,) granted on the 1st of Srabun 1241 B. S., which not being repaid she sues for the above sum, which includes interest ; a bond was executed on the above date accordingly.

Indernarain Haldar and Kumlachurn Haldar, son of Oodyenarain, deceased, denied that any loan had been granted as stated. They say that one Petumber Banerjee, from feelings of enmity, had instigated plaintiff to bring forward this claim. The other sons (Joyegopaul, the defendant, and Ramgopal Haldar) of Oodyenarain, stated in a petition that they were both minors, which point they left to the moonsiff to decide from their appearance. The moonsiff considered that Joyegopaul had obtained his majority, but not Ramgopal. Joyegopaul, though notice was served on him, filed no answer.

The moonsiff decreed the sum claimed as he considered the execution of the bond, which was filed in his court, to have been proved by the evidence, and that there was no proof of the case having been got up at Petumber Banerjee's instigation.

The appellants appeal, and repeat the statements made in the lower court that Petumber Banerjee has been the instigator of this claim being preferred. They urge that one witness, of two who were examined regarding the execution of the bond, had stated that he only once before gave evidence, whereas appellants have copies of his depositions in three several cases given previously. Such a person is not, they submit, worthy of credit. The appellants say that the respondent, Takooranee Dossee Debea, would not produce two other witnesses, whose names are Ram Mookerjee and Sreenath Haldar, lest they would tell the truth.

Two witnesses Daibee Churn Lushker and Kooree Doss, whose names are attached to the bond, deposed in the lower court to its execution and the payment of the money. There are three others, Ram Rutton Banerjee, Ram Rutton Chatterjee, and Joyegopaul, who depose to an offer being made on Indernarin's part to settle this claim. There are five witnesses, on the appellants' side, who say that Petumber has induced the respondent Takooranee to being forward this action; but I do not learn from their evidence that he has any intimacy or influence with the respondent justifying the conclusion that she has brought the action at his instigation. As to the statement that the witness, Kooree Doss, denied having previously given evidence; I see, on referring to his deposition, that he made no such assertion; and with regard to the absent witnesses of the respondent Takooranee, who the appellants pray may be called to give evidence, I observe that no process could be served on Ram Chunder Chatterjee in the lower court as he could not be found, and the appellants' pleader now informs me that the other witness they refer to, Sreenauth Haldar, is dead. Under these circumstances I see no reason to disturb the moonsiff's decision.

THE 23^D NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Mr. J. Weston, Sudder Moonsiff, passed on the 27th of June 1846.

Eedoo Mistree, (former Defendant, with Rujnoo Bebee,)
Appellant,
versus

Daibee Dhin Tewarree, (former Plaintiff,) Respondent.

FOR rupees 25, advanced as a loan.

This plaint was instituted to recover the above sum, with interest, being balance of money, rupees 50, borrowed by Dhunnee,

defendant Eedoo's wife, who was a sirdarnee of coolies in the Kidderpoor dockyard. The loan, it is stated, was granted on the 15th of Aughun 1251. On the 25th of Assin 1252, rupees 25 were repaid, and before the amount borrowed was liquidated Dhunnee died. Plaintiff asserts that the defendants are her heirs, and liable for the remainder of the debt.

Eedoo only filed an answer. He denies that Dhunnee borrowed any money from the plaintiff. He says that his wife was ill for three months before her death, and though she was in a dying state the plaintiff made no application for his money. He admits that legally he is heir of Dhunnee, but succeeded to none of her effects. He further states that no legal claim can lay against Rujnoo the other defendant, who is sued by plaintiff as the widow of the godson of the late Dhunnee.

The moonsiff decreed the claim for the principal, but against the estate of Dhunnee only, as it did not appear the defendants had succeeded to any portion of it. He was of opinion that no stipulation for interest was entered into at the time the loan was made, which, he observes, was proved by three witnesses on the plaintiff's part to have been granted to Dhunnee. These persons also, he said, proved the repayment by her, of rupees 25, and that plaintiff had applied to her for the remainder due to him.

Eedoo the defendant appealed from this decision, repeating that no loan had been granted to his wife Dhunnee, that no application was made to her for payment when she was ill; and appellant adds that plaintiff, who is a durwan at the Kidderpoor dockyard, is too experienced a person to lend money to any individual on a verbal promise to repay. He says that after Dhunnee's death certain of her effects were, subsequent to the decision by the moonsiff, sent in by the police to this court. Eventually they were, on proof of appellant's being her heir, made over to him, but this was done without any claim being preferred on respondent's part, who would then have undoubtedly come forward, had any debt been really due.

In the lower court three witnesses, Gyarapi Mundul, Oojoo-dheea Sookul, and Lakeeput Sing, depose to the loan of 50 rupees having been made by the respondent in Aughun (they do not specify the date) to the appellant's wife Dhunnee; and they say rupees 25 were repaid by her in Assin 1252. The first named witness says when the loan was granted there was no stipulation at all regarding interest. The second says that Dhunnee agreed to pay 1 anna per month, or 75 per cent. per annum interest on each rupee. The third says it was agreed to pay only the Company's rate of interest, of 12 per cent. per annum. These witnesses say that in consequence of the transactions between the appellant's wife and the respondent, who was a durwan

of the dock-yard, the latter was dismissed by the superintendent from his place. But their statement on this point is not corroborated by other circumstances, or evidence. Three witnesses for defendant, appellant, depose that no application ever was made by the plaintiff, respondent, to Dhunnee, for the money during her last fatal illness, though she was ill for three months, or, according to the evidence of Oojoodheea, one of plaintiff's, respondent's, witnesses, for more than that period. It appears to me, if the money claimed was really due, and plaintiff, respondent, seeing that Dhunnee was in a dying state for so long (she died in Maug 1252) a time before he brought this action, in Falgoon 1252, that he would not, failing to obtain his money, have delayed to institute a suit, and that he would have proceeded according to Regulation II. of 1806 to attach some of Dhunnee's effects. As I have remarked, plaintiff's, respondent's, three witnesses contradict each other regarding the stipulation for, and the rate of interest; and their statement that the plaintiff, respondent, was dismissed from his situation, because of the transactions with Dhunnee, has not been corroborated. Under these circumstances, and as the alleged loan was made only on a verbal agreement to repay, I decree this appeal.

THE 24TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Doorgapersaud Roy, Moonsiff of Dum Duma, passed on the 30th of June 1846.

Golammee Gazee and Sikdar Gazee, (former Defendants),
Appellants,
versus

Tarachand Burdhun, (former Plaintiff,) Respondent.

To recover rupees 24-9, on account of a bond.

The plaintiff sued the above named two defendants, and Meindee Gazee also, for the sum stated, consisting of rupees 22 principal, and rupees 2-9 interest, lent on a tumsook, or bond, on the 2d of Maug 1251, to the defendants.

Of the defendants only Golammee and Sikdar filed an answer. They pleaded that they gave no bond, that, on the date of that document, they were at a place called Andarmanic, in the Soonderbuns, cutting wood, which they can prove by evidence.

The moonsiff decreed the case; for the evidence of four witnesses, Doorgaram, Sagur Doss, Ram Chand, and Kalachand, proved the execution of the bond and the payment of the money to the defendants. The two defendants, Golammee and Sikdar, failed to adduce any evidence, as they said they would, to prove that they were absent, on the 2d of Maug 1251, at Andarmanic.

They now appeal, stating that the reason of their witnesses not being present in the lower court, was that one of their vakeels, Bistennath Doss, to whom they had entrusted a list of their witnesses, to be filed, was obliged to attend the judge's court in the matter of Petumber Chunder, a pauper, during the trial of their case, and Bistennath not making the list over to his partner, it was not produced, and they lost their cause. They pray that they may not suffer from this vakeel's neglect, and their witnesses may be caused to attend.

In order that the truth or falsehood of the appellants' statement might be ascertained, the nuthee in Petumber's case was sent for. I observe that the appellants' vakeel did attend this court in the matter of the pauper, Petumber Chunder. But it also is clear that the vakeel, Bistennath, did not leave the moonsiff's cutcherry until the 22d of June of this year (according to the moonsiff's roobikarree,) and that he arrived here on the 1st of July. He was dismissed, to return to his duty, on the second of the same month. This case was decided during his absence, on the 30th of June; but I learn from the papers of this case, sent up from the lower court, that the appellants, defendants, were required to file a list of their witnesses on the 27th of April; again they were called on to do so on the 16th of May, and, a third time, on the 25th of the same month. These requisitions were made, the proceedings indicate, in the presence of the vakeels of both parties, and having been long before the departure of appellants' pleader Bistennath, (which took place on the 22d of June,) it is plain to me, that the failure on the appellants' part to file their list of witnesses, was not, as they say, owing their vakeel's absence, but to their own neglect. Were it however, otherwise, it is not, in my opinion, sufficient for a party to deliver a list of witnesses to his agent, or vakeel, in a case. Provision must be made for the expences incident on their subpoena and attendance, which appellants nowhere plead they did provide, or deposit with any one. As the statement in their petition of appeal is palpably untrue, and as their pleas in the lower court were not enquired into, in consequence of their own neglect, I dismiss their appeal.

THE 24TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Munmohun Baboo, Moonsiff of Nowabgunge, passed on the 30th of June 1846.

Sheik Jynooddeen and three others, (former Plaintiffs,) Appellants,
versus

Sheik Musleem, (former Defendant,) Respondent.

To recover 31 rupees, 15 annas, 3 gundahs, 3 cowries, due for rent.

This suit was instituted for rent alleged to be due on a russud-dee, or progressively increasing jumma, from the year 1247 until 1251 inclusive, for ground, four beegahs fifteen kottas, held under a cubooleut given by the defendant to the plaintiffs. The plaintiffs say defendant had paid them rupees 10, annas 7, for rent, but they are obliged to have recourse to this action to realise the remainder. The land, for which the rent is due, is situated among property partly purchased by plaintiffs' ancestors from those of the defendant, and partly in their hereditary tenure. Both that tenure, and the land purchased, is peerooter lakeraj land, situated in the mouzah of Pathooah, pergunnah Ookurra.

In answer defendant pleaded that the land, for which rent is claimed, is his own hereditary peerooter lakeraj possession, that plaintiffs have no claim to that property, and that no rent ever was paid by him, or his predecessors, for it. Further he submits that this land, being peerooter, no part of it could be sold or alienated, according to the rule published in the Construction, No. 1166.

The moonsiff would not enter into the merits of the case, but nonsuited the plaintiffs because, there being a dispute as to whether the land was rent-paying, or rent-free, and for the rights of the parties therein, he considered that those matters ought to be decided before any claim, regarding rent, was investigated.

Plaintiffs appeal from this award, submitting that the moonsiff came to a decision not warranted by precedent in this case, and that other ryots on the land they purchased from defendant's, respondent's, predecessors, have paid them rent without objection.

They say, further that they can prove their claim to the rent, by a copy of a plaint filed against them and the present defendant, respondent, in the year 1227 B. S.

I do not concur with the moonsiff in opinion that the trial of this case cannot proceed, because the question of right to the land, for which this rent is claimed, has not been settled. It appears to me that a rule has been established in the Construction, No. 676, which shows that the moonsiff ought to have enquired into, and decided the plaintiffs', appellants', claim, leaving the defendant, respondent, to establish his right to hold the land as rent-free, on the plea that it was part of his peerooter tenure, by a suit instituted according to Section 30 of Regulation II. of 1819. As to the plea, contained in the defendant's answer in the lower court, that it was not optional in the plaintiffs to purchase any portion of this grant, I have to remark that such purchase, if effected, did not alienate the grant, or any portion of it, from the purpose it was originally made for; it was simply a sale, by one holder, of his share of the peerooter land, to a partner, and it does not follow, from such a sale, that the profits accruing from the grant had been diverted from the purposes they were intended to be applied to, when it was originally assigned. Under these circumstances the moonsiff's

decision, nonsuiting the plaintiffs, must be reversed, and the case sent back for him to try on its merits.

THE 25TH NOVEMBER 1846.

PRESENT : R. TORRENS, JUDGE.

*Appeal from the decision of Mr. J. Weston, Sudder Moonsiff,
passed on the 29th of June 1846.*

Callee Dossee Debee and Nund Coomar Mookerjee, (former
Defendants,) Appellants,

versus

Rajnarain Banerjee, (former Plaintiff,) and Meis Chunder Bagchee,
(former Defendant,) Respondents.

To recover rupees 9-15, value of property wrongfully attached according to the provisions of Regulation V. of 1812.

The plaint set forth that the defendants Callee Dossee Debee and Nund Coomar Mookerjee her husband, had, on the plea of rent (9 rupees, 15 annas,) being due by the other defendant, Meis Chunder Bagchee, attached the property of the plaintiff. He alleged that the things attached were the fish in a tank situated within plaintiff's debooter tenure, in Bailtullah, and a mat hut therein also. Defendants falsely alleged that what they attached was within their landed property, in the mouzah of Munooherpoor.

No answer was filed by Meis Chunder Bagchee, but the defendants, Callee Dossee and Nund Coomar, stated that the property attached belonged to Meis Chunder. They urge that this suit is laid at too small an amount, that the real value of it is the price of the bermooter land the plaintiff declares to be his, and which is 1,000 rupees. Further, they urge that the land is situated in mouzah Munooherpoor, within land assigned by gift, with other property, to Callee Dossee, by her mother Bissomei Debea. She assigned, it is stated, a 10 annas portion of the property described in the "dhan putter," or deed of gift, to Callee Dossee; and a 6 annas portion was assigned to Chundernath Chatterjee, Bissomei's grandson. He is now dead, and has been succeeded by his mother and wife, who being under Callee Dossee's protection, she, on their behalf also, had recourse to Regulation V. of 1812, to recover their common rent. The defendant, Meis Chunder Bagchee, it is urged, took a lease of 2 beegahs, 7 kottas, at a yearly rent of rupees ten for six years; and being in arrears in the payment of his rent, they properly had recourse to the provisions of Regulation V. of 1812, to recover their money. The defendants allege that Meis Chunder did pay his rent regularly up to 1251 B. S.

The moonsiff gave a decree in the plaintiff's favor. He was of opinion that the evidence of witnesses adduced by him, and a report furnished by the local ameen, proved that the ground claimed by the defendants was that leased to Meis Chunder, and within their property of Munooherpoor, on account of arrears of rent, on which ground defendants had recourse to process according to Regulation V. of 1812. It was proved to be a portion of plaintiff's debooter tenure. He observed that the evidence of defendants' witnesses was contradictory.

An appeal is preferred by the defendants Callee Dossee and Nund Coomar. They urge that the evidence taken in the enquiry made by the ameen proved their case, so did the evidence of their witnesses in the lower court. They further submit that no papers, or nuthee, according to Section 31 of Regulation VII. of 1822, were called for from the collector's office and filed with this case. Finally they state that the value of the suit is incorrectly estimated, as they urged in the lower court.

An answer to the above petition of appeal is filed by the plaintiff, respondent, who pleads that there is no such person as Meis Chunder Bagchee, who is a man of straw, and his name made use of solely to enable the appellants, by means of a fictitious claim according to Regulation V. of 1812, to get a footing within plaintiff's, respondent's, tenure. A petition is put in by Deenomei Debea, who is referred to in defendants' (appellants') answer in the lower court, submitting that the statement therein, that she, in virtue of the deed of gift executed by Bissomei Debea, is entitled only to a six annas share of the property described in that deed, is erroneous, for she alleges that her son Chundernath was assigned a 12 annas share of that property.

Without referring particularly to, or placing much reliance in the ameen's report, I observe that Jugmohun Bāag, Rampersaud Bagdee, and Rajib Grammee prove that plaintiff put the fish (attached by defendants, appellants) into the tank which is situated in plaintiff's, respondent's, ground, and that the house, also attached, is inhabited by plaintiff's, respondent's, gardener. There are four witnesses who have given evidence on the part of defendants, appellants. The first is Hur Chunder Banerjee, who though he says the attached property is on the ground of defendants, appellants, in Munooherpoor, yet states it is on lakeraj property, which defendants, appellants, do not allege their tenure to be, but which plaintiff, respondent, does. The next witness Chundee Churn flatly declares the attached property to be in plaintiff's, respondent's, ground. The third, Sisteedhur Bagdee, deposed to Meis Chunder Bagchee giving a cuboolut for the ground leased to him, but says, what is at variance with defendants, appellants', answer, that the cuboolut was given to Bissomei, the predecessor of defendants, appellants, and not, as they

plead, to themselves. The fourth witness adduced to prove the cubooleut asserts, what also is contradictory of the statement in the answer of defendants, appellants, that the cubooleut was given by Meis Chunder to defendants, appellants, in 1244; whereas they, in their answer, say it was given by that person in 1245. I do not consider that Section 31 of Regulation VII. of 1822, (extended to Bengal by a subsequent enactment,) can have any reference to this case, for there was no suit pending, or decision come to, regarding this claim for rent, by the revenue authorities. With respect to the objection raised, that the value of this suit is under-estimated, I am of opinion that the spirit of the Construction, No. 862, shows that it should be estimated at the amount of rent in dispute between the claimant of the arrear and the defaulter. Under these circumstances I dismiss this appeal, but do not of course intend that thereby any party, in this suit, is to be prevented from suing to establish his right to the land for which rent has been claimed.

THE 26TH NOVEMBER 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Baineemadhub Soom, Moonsiff of Kuddumgotchee, passed on the 4th of July last.

Pathoo Mundul, (former Plaintiff,) Appellant,

versus

Maroof Mundul, Pairoo, widow of Jureef, (deceased, defendant, pending the trial,) Jakur, Bakur, and Sakur, sons of Jureef, (former Defendants,) Respondents.

To recover rupees 141-8-10, value of paddy.

The plaintiff instituted this suit to recover the above sum, to pay which, plaintiff says, the defendants are liable, as Jureef, deceased, and Maroof, borrowed from him 4 beeses, 13½ arrees of grain on the 27th of Srabun 1247, to be repaid in the months of Bhadoon and Poose, stipulating to afford a profit at the rate of half a bees on each bees lent, and a bond was written out accordingly. In Maug 1247, 1 bees, 5½ kattees were paid, and the rest, 5 bees, 15 arrees, being undelivered according to agreement, this suit is instituted, which plaintiff values as above stated; and which was the value of that quantity of paddy in Assar 1248, at the market rate of 6½ kattees per rupee then current.

Referring to the terms used in the plaint I have to remark that 1 bees consists of 40 maunds; 1 arree of 2 maunds; 1 kattee of 10 seers.

Subsequently to the institution of the suit Jureef died. The defendants, now extant, pleaded that no grain as set forth was borrowed. That the action has been instituted against them, because

there is a quarrel on their part with plaintiff, regarding a road near their residence. They state that Jureef, on the date specified in the bond, was laying ill in his house; and they urge that no one would agree to render such a profit, as plaintiff claims, in so short a time; for it is stated by plaintiff that they borrowed the grain on the 27th of Srabun,—yet, three days after, in Bhadoon, they were to make themselves liable to repay it with a profit of 50 per cent. It is further stated that Jureef's son, described as the defendant Bakur, is not so called, but that Bukaoolla is his real name.

The moonsiff dismissed the claim, as he considered that the witnesses adduced by plaintiff gave evidence which was contradictory. Thus Fuzzoo Mundul said, the grain was carried away by order of Jureef and Maroof on oxen, and by coolies, at three intervals, and that those two persons held the bags while the grain was being put in them. The second witness, the moonsiff remarks, says that the defendants were employed in conveying away the grain for two days, and while the grain was being placed in the bags the defendant, Maroof, and a nephew held them. A third witness, Cassinauth, says that defendants took away the grain during one day, and while it was being put in the bags they were held by Maroof, Sakur, and Bakur. The moonsiff observes that the witness Moozdeen Mundul did not see any bond written, or grain taken away; further that Tyeboolla says only Maroof held the bags while the grain was being poured therein.

An appeal is preferred by the plaintiff, who submits that, as the witnesses, five in number, who deposed to the execution of the bond, and the loan of the grain, agreed in the most important points, and as two others deposed to his, appellant's, frequent applications to defendants for what was due to him,—the discrepancies noticed by the moonsiff are immaterial, and what might be expected to occur after so long a time had elapsed. Further appellant urges that the bond was written by Jureef's son Bakur, who was frequently called on by the moonsiff to attend in his court, in order that his hand-writing might be compared with that of the bond, but he would not appear. He further states that Jureef was not incapacitated by illness from executing the bond, at the time of its date. He lives close, within $\frac{1}{4}$ a mile, to the appellants's residence, and was able to come that distance. As to the name of Jureef's son not being Bakur, but Bukaoolla, as pleaded, appellant submits that this is untrue; for he produced a kabala, or deed of sale of land, sold by Daim and Doomun, to appellant, which document was written out by Bakur, whose name, as the writer of it, was attached thereto; and it had been filed, and proved, in a miscellaneous case, No. 1100, of 1843, in the court of the principal sudder ameen.

The evidence of five witnesses proves that the grain was delivered to the defendant Maroof and to the late defendant Jureef. They

have also proved the execution of the bond on the 27th of Srabun 1247. Two witnesses have proved the repayment of the portion of the grain lent, as set forth in the plaint. There are two witnesses also, on appellant's part, who have deposed to his applying for repayment of the remainder. The appellant in appeal has produced the kubala, referred to in his petition, which is written by Bakur, and signed as Bakur Mundul the writer of it; this, I consider, disproves the allegation that Bukaoolla, and not Bakur, is the name of the late defendant's, Jureef's son. If really this claim were false I opine that Bakur would have attended, as required, to assist the moonsiff in discovering the truth; this he would not do, though living within three coss of the moonsiff's cutchery, as the respondent's pleader admits. As to the discrepancies in the depositions of appellant's witnesses noticed by the moonsiff, which shows he has carefully looked into the evidence, I consider that they are unimportant, when the clear testimony as to the loan of the paddy and the execution of the bond is regarded; for it does not appear that the witnesses spoke as to the bags being held and the grain conveyed away at the same moment, —and it may have been that they alluded to different times, as the grain to be conveyed away and placed in bags was a large quantity, and must have taken a long time to pack and carry away. There are two witnesses only who have deposed on the part of defendants, respondents. They depose to there being a quarrel between the parties, and to Jureef's illness at the date of the execution of the bond. One of these witnesses, Mokeem, deposed that Jureef was then ill and unable to move, but it does not appear from this person's testimony that he actually saw Jureef in that condition. The same witness deposes to the respondent's, Bakur, not bearing that name but that of Bukaoolla. He spoke hesitatingly on this point, having first of all said that person's name was Sakur. Though the other witness, Anoo, adduced by defendants, respondents, deposed to the existence of a quarrel between the parties, and to Jureef's illness on the 27th of Srabun 1247, I do not consider that there are circumstances apparent in this case, in favor of the respondents, which would justify me in dismissing this appeal and the claim made by the plaintiff, appellant. He has, however, brought this action valuing the grain at the market rate prevalent during the month of Assar 1248; why, does not appear. I do not consider he ought to have done so. It was stipulated to repay the grain lent, in Bhadoon and Poose 1247, and in deciding this case, I think it proper to award that the grain, as stipulated in the tumusook, be repaid to the appellant. I do not award the value money, as the market rate current in the months referred to in the bond, has not been proved. I accordingly decree this appeal.

ZILLAH BACKERGUNGE.

THE 18th AUGUST 1846.

PRESENT: A. SCOTCE, Officiating Judge.

No. 19 of 25th April 1845.

*Appeal against Molooee Mahomed T. Ameen, Principal Sudder Ameen's
decret, dated 26th March 1846.*

Neelkunt Shah Rae, Appellant, (Plaintiff.)

versus

Mirza Hussun Jan, Respondent, (Defendant.)

NEELKUNT SHAH RAE sued, on a bond dated 15th Assar 1248, to recover rupees 450, lent to defendant on that date, with interest. In defence the loan was admitted, but it was urged that for the year 1248, plaintiff having acquired an under farm (dur ijarah) from certain parties who farmed defendant's property immediately from himself, owed him (defendant) a rent of rupees 528-14-6-14; that plaintiff in fact repaid himself out of this rent, and is still indebted to defendant for the balance. To this it was replied by plaintiff that defendant, on the 30th Assar 1248, borrowed from him a second sum of rupees 3000; that in part payment of this loan, defendant gave him a "burat" or lien upon the rent of the dur ijarah for 1248 to the amount of rupees 400, and that he had paid defendant the balance of the rent rupees 128-14-6-14 in cash.

The principal sudder ameen appears to me to have had an obscure apprehension of the real issue which he had to try. He proceeds first to assure himself that plaintiff held an under farm; and for what rent plaintiff had made himself liable. He then gives his reasons for considering the bond for rupees 3000 (which, let it be observed, was altogether unconnected with this action) to be unauthentic, and for rejecting the burat by which plaintiff alleged his second loan was protected, and thus believing that plaintiff had not accounted to defendant for the rent of the dur ijarah, he dismissed the suit.

The grounds upon which the principal sudder ameen rested his judgment, shew at once its fallacy. He has tried every thing but what he ought to have tried. Plaintiff sued upon a bond for rupees 450. The principal sudder ameen tried the validity of a bond for rupees 3000. Plaintiff sued to recover rupees 450 in cash. The principal sudder ameen tried the validity of a transfer credit, in part redemption of a loan of rupees 3000. Defendant holds

plaintiff's acknowledgment of an annual rent of rupees 528-14-6-14, being due by him; but the adjustment of an account between a landlord and tenant, forms altogether a distinct cause of action from that of an account between a debtor and creditor. Defendant has no evidence to shew that he had provided for the liquidation of the loan of rupees 450, out of the rent of rupees 528-14-6-14. It is clear that the loan of rupees 450, as a loan, is undischarged. But whether the rent of rupees 528-14-6-14 has been paid, or whether the plaintiff as a tenant has fulfilled his obligations to his landlord, is a point which in this suit I feel myself quite incompetent to determine. There may be many reasons, why plaintiff as a tenant should resist the payment of his rent. He as plaintiff seeks the recovery of money lent. We cannot, I think, make him change places with his debtor; and plead as a defendant in justification of the course he seeks to pursue for the adjustment of his rents.

I therefore decree the amount sued for with interest, laying all the costs of both courts on respondent.

THE 19TH AUGUST 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 12 of 9th March 1846.

Appeal against the decision of Moulovee Mahomed Kuleem, Principal Sudder Ameen, dated 12th February 1846.

Tilok Chunder Rae, Appellant, (Plaintiff,)

versus

Ramkisto Banerjee and others, Respondents, (Defendants.)

TILOK CHUNDER RAE, declaring himself to be proprietor by purchase of a two anna share in two small estates, namely, talook Sheppershad Sumadar and talook Debeepershad Sumadar, set forth as the cause of his action an agreement entered into with him by Huree Gobind Sumadar, the proprietor of the remaining fourteen annas of the same talooks, whereby it was arranged that the sudder juma payable to Government on account of Huree Govind's share, should be paid immediately by Tilok Chunder; and that besides reimbursing him for payments so made, Huree Gobind should allow Tilok Chunder two annas in the rupee in return for the service stipulated. Sickness was the reason assigned by Huree Gobind for his making this arrangement. He afterwards died and was succeeded by the defendants.

The provision made for the liquidation of Huree Gobind's share of the sudder juma was this. Plaintiff (appellant) received a certain portion of the two talooks under his exclusive charge; and

reserving from the rents of this portion what was considered to be equivalent to plaintiff's share in the estimated produce of both estates, there remained a surplus of rupees 36-9, payable to defendants. This surplus was to be applied to the reimbursement of plaintiff for the advances made by him on account of defendant's sudder juma, and besides Huree Gobind agreed to contribute in cash rupees 49-6-9-1. Taking these two items together, Huree Gobind bound himself to pay Tilok Chunder rupees 85-15-9-1; of which sum rupees 76-6-9-1 was on account of his fourteen annas share of the sudder juma due to Government, and rupees 9-9, at the rate of two annas in the rupee, was intended to remunerate Tilok Chunder for acting as it were as his co-proprietor's agent, and to cover the interest which in addition to the principal revenue he might have to pay the collector.

Plaintiff, therefore, declaring that the entire sudder jumma of the two talooks for the years 1240 to 1246, inclusive, was paid by himself, and that Huree Gobind and his heirs have failed to pay him the annual sum of rupees 49-6-9-1, as agreed upon, sues to recover the same for the years in question with interest.

In defence plaintiff's right of property in the two talooks was denied altogether; it was said he had no better title than a mortgage; and that defendants had themselves instituted a suit (before the present claim was preferred) to oust Tilok Chunder from the possession of a property, which they alleged he illegally retained; and further it was asserted that Huree Gobind never gave the "ikrar" or agreement produced by plaintiff; that he had paid the sudder juma of the two talooks from 1240 to 1246 through one Rhidye Kishen, and that defendants themselves had paid from 1247.

Tilok Chunder's right to a two anna share of the talooks has been definitively affirmed. His purchase was found to be absolute; both in the court of original jurisdiction and on appeal the suit instituted by the present defendants was rejected, and accordingly it only remains to consider by whom the sudder juma of the talooks for the years 1240 to 1246 was paid, and what is the validity and what the effect of admitting the "ikrar" upon which the suit is founded.

Almost the whole sudder juma for the period at issue, was paid by Rhidye Kishen, and this man both sides represent to have acted as their agent. Now one circumstance is alone almost sufficient to determine my judgment. For the whole period of seven years which plaintiff's claim embraces, he received and has produced the dakhilahs, or receipts granted by the collector in acknowledgment of the revenue paid. A few exceptions to this remark I shall immediately notice, but meantime it is to be stated that defendants have not a single receipt to bring forward, in justification of the assertion that Huree Gobind himself had paid the re-

venue as it became due. Rhidye Kishen, they say, has been bought over by Tilok Chunder, and has given to him receipts which he ought to have given them, or Huree Gobind. But the possession of a receipt is like the possession of a title deed, it verifies the transaction which it describes, and it protects the party by whom it is held; and more especially, as in the present instance, where the plea of plaintiff rests not upon a solitary transaction or upon a single document, but upon more than forty receipts granted throughout seven years, the conclusion is inevitable that the party in possession of so many receipts acquired them in return for money which he himself had paid.

It is not pretended by defendants that Rhidye Kishen was ever formally appointed mookhtar of Huree Gobind; he acted merely as a friend; and that Rhidye Kishen and Huree Gobind stood at one time on this footing they appear to be justified in asserting. From extracts of the accounts of the collectorship, it appears that on several occasions before the purchase of the share held by plaintiff, Rhidye Kishen was employed to pay in the revenue of the talook; but subsequent to plaintiff's purchase (10th Assin 1240,) if I take the possession of the dakhilahs and the evidence of Rhidye Kishen in connexion with the ikrar granted by Huree Gobind, and the validity of which appears to be established, I consider that Rhidye Kishen acted for Tilok Chunder alone. By the terms of the agreement, which was written the day following the deed of sale, Huree Gobind threw upon Tilok Chunder the duty of discharging the public revenue of their joint estates. If the agreement be genuine, as I believe it to be, Huree Gobind ceased to have occasion to employ an agent of his own; or, if the agreement be rejected, and the stipulation in favor of Tilok Chunder be set aside, it becomes so much the more the interest of Huree Gobind to have procured from his alleged agent the most, if not the only authentic evidence of his having transmitted money, as occasion required, to discharge his own obligations.

In addition to the evidence of witnesses, the validity of the agreement is corroborated in another manner. Seeing that the stamp was endorsed as being sold in the name of Huree Gobind, I sent for the stamp vendor's sale book that I might compare the entry therein with the endorsement. Now on examining the book I found not only that Huree Gobind had bought a stamp, corresponding with the stamp of the agreement, on the date assigned, but also that he bought at the same time the very stamp on which plaintiff's deed of sale was written.

Again, in the agreement, the reason assigned by Huree Gobind for his employing Tilok Chunder to pay the revenue due from them both, was his own ill health; and I find that in a miscellaneous petition which he presented to the judge in December 1836,

(1243,) complaining chiefly of the extortionate conduct of Tilok Chunder and his brother Gopee Chunder, he mentions that latter, while he (Huree Gobind) was ill, contrived to procure a conditional sale of a two annas share in the estates. From this it clear, Huree Gobind himself on another occasion admitted the degree of personal incapacity which was assumed in the ikrar the reason for his entering into a peculiar and unusual arrangement. And perhaps the disagreement of which this petition plainly speaks may shew that Huree Gobind was not without a duress to withhold what in fulfilment of his agreement owed to Tilok Chunder.

Defendants in support of their assertions adduced certain money purporting to be written by Rhidye Kishen in acknowledgment sent to him, and also certain witnesses to prove that they delivered this and a few other sums to this man: but not to say, that these alleged remittances covered only a small portion of the public revenue, and that a remittance to Rhidye Kishen was not a remittance to the collector, I think that plaintiff (appellant's) case is conclusively proved, and to neither witnesses nor letters can I attach any credit.

The principal sudder ameen dismissed the suit for these reasons: He rejected the title which plaintiff founded upon the production of the dakhilahs, because it was not stated on the face of them, that the money had been paid on the part of Tilok Chunder: and inasmuch as three witnesses stated that Rhidye Kishen or the part of defendants paid revenue to the collector, he thought dakhilahs could not be said to support the case of plaintiff; farther he considered that the agreement was written recently on old paper, and that it was unlikely that plaintiff would have continued year after year paying so much more than he ought to have paid, without seeking redress. But I would observe in the first place that a collector is concerned to state only by whom, in person, revenue has been tendered to him; proprietors do not register their names; revenue may or may not be paid by those who are recorded as proprietors of estates on account of which revenue is tendered, but at any rate for all ordinary purposes, it is sufficient for a collector to record the name of party through whom personally the payment is made; and certainly the receipt does not become vitiated with respect to principal by whom the money may have been transmitted, because his name (the name of an absent party and of a party who may have availed himself of the opportunity of having his title in arrears registered) is not entered as the remitter. Or if it were of no use the present receipts could benefit no one, as they are drawn up in the name of the original registered proprietor, long since deceased. And as to the witnesses they do not by any means say that Rhidye Kishen paid the revenue (that is, the entire revenue)

of the talooks which form the subjects of this action on account of Huree Gobind: they professed to have taken several sums from the latter to Rhidye Kishen; and they said generally that Rhidye Kishen for many years acted as Huree Gobind's agent; but to prove that Rhidye Kishen paid to the collector the revenue which Tilok Chunder sues for on the part of Huree Gobind, their evidence entirely fails; or if their evidence were good for that purpose (of the whole sum claimed) which they were the means of delivering to Rhidye Kishen, how does this argument affect plain-
 's claim to benefit by the other dakhilahi corresponding with which no remittances were attempted to be shewn?

The only *doubt* which I have entertained in this case is with respect to a condition in the original agreement, whereby it was stipulated that both parties should at the close of each year compare the assets of the different portions of the two talooks which they severally held, and adjust their accounts accordingly. But this applies as much to the land held by Huree Govind as to the land held by Tilok Chunder, and is obviously a distinct matter from the obligation which Huree Gobind incurred, to account to Tilok Chunder for that portion of the suddei juma of the two estates which the latter paid to Government in excess of his own share. Besides, that one or other of the parties has enjoyed more of the rent produce of the lands than he ought to have enjoyed, does not form a part of these pleadings.

Upon these grounds I decree plaintiff's (appellant's) claim, with exception of certain payments of the years 1240, 1241, 1244, 1245, of which the receipts are not produced and of which no payment on account of plaintiff himself is not especially proved, and excepting that portion of the claim which consists of the remuneration of Tilok Chunder for the service rendered by him to Huree Gobind, I allow interest from the close of each year. Costs, with a proportionate deduction on account of the deduction thus made in the claim, will be charged to respondents.

* THE 25TH AUGUST 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

Suit No. 58 of 4th August 1845.

Mur Muneo Chowdrain, wife of Muddun Narain Roy, deceased,
 (Plaintiff.)

versus

Collector of Backergunge, Mahomed Ahsun Chowdry, Khubeeroodeen Mahomed and others, (Defendants.)

PLAINTIFF, representative of the deceased Muddun Narain Rae, forfeitor to the extent of one anna, six gundas, two cowries two krant share (1/16, 1/2) of an estate described as a "seven annas share of Haddanah Saleemabad," sued to quash the sale of that estate, which was subject for arrears of revenue, on the 4th

May 1840. Plaintiff states that up to the day of sale, the advertized arrear amounted to rupees 246-6-4, besides rupee 1, as interest; that two agents, Ram Sagur and Kallee Pershad, were in attendance and were prepared to pay that sum; that Neetye Churn, towzee novees of the collector's office (a defendant,) in collusion with Khubeerooddeen Mahomed, in order to effect a sale of the estate, raised the balance to rupees 345-6-4, and laid an account so struck before the deputy collector who was about to conduct the sale; that the deputy collector gave the zemindar's agents respite till the evening to make up a balance which exceeded their expectations; and that not waiting for the expiry of the stipulated period, and before the return of the mooktar who had gone for the money demanded, the sale was begun for a balance as certified in the sale roobokaree of rupees 288-0-11, (even that, it is observed, exceeding the advertized balance,) and that Khubeerooddeen Mahomed (serishtadar of the civil court,) having an understanding with Gopal Kishen, a co-proprietor in the estate (whose son is a defendant,) put forward his son, Mahomed Ahsun, to bid, and that the estate worth 60,000 rupees was knocked down to him for rupees 12,000.

Plaintiff further states that the same day, before the bynah or instalment of the purchase money had been paid, the mooktars attended and delivered rupees 345-6-4, the full sum which had been originally demanded; that they at the same time presented a petition, requiring rupees 98, which they considered an exaction over and above the advertized balance, to be refunded to them; that the day then closing, no order was passed upon this application; that next day the deputy collector did not attend kutcherry; but that on the 6th May that officer, though he might have discovered the irregularity which had occurred and might have procured the reversal of the sale, (knowing as he did that the money lodged on the part of the defaulters had been paid by his own desire,) merely ordered the petition to be forwarded, for the consideration of the commissioner, with the account sales.

Plaintiff's main plea rests, it will be observed, on an error of account and on a surcharge. And in answer to this plea, the collector and the defendants Khubeerooddeen and Mahomed Ahsun, denying the correctness of the narrative which plaintiff has given of the events said by her to have occurred during the day of sale, maintain the correctness of the accounts upon which the sale was founded.

In appeal to the commissioner against the sale, Muddun Narain (husband of plaintiff) was understood to object that Mahomed Ahsun was a benamsee purchaser, and that Gopal Kishen, one of the defaulters had, under cloak of Mahomed Ahsun's name, recovered (in whole or in part) the estate. But in this suit though Gopal Kishen's son is made a defendant, and though it is at-

tempted to be proved by witnesses; that the irregularities which plaintiffs complain of, were committed with his co-operation, plaintiffs' witnesses distinctly admit that they are not prepared to shew that Nubkanto, as heir of Gopal Kishen, retains any interest in the estate; and the benamsee plea with respect to him may be said to be withdrawn. Nor can I attach more weight to a similar allegation with respect to the defendant Khubeeroodeen Mahomed. This objection was not urged to the revenue authorities. Plaintiff cannot be said to have suffered by the dereliction of any legal principle, even if it be admitted that Khubeeroodeen holds an estate which his son bought. And the common interest subsisting between father and son, I think, protects the defendants against the imputation of that surreptitious substitution of a nominal purchaser which the sale law of 1822 unquestionably prohibited. Lastly, it has been urged that the sale of the estate within one month of the date of the notice of sale being published in the mofussil, renders the sale invalid; and in support of this plea, plaintiff refers to Sections 5 and 6, Regulation VII. of 1830; but it is to be observed, Regulation VII. of 1830, provides not for the mofussil but for the sudden notices of sales, that is, for the advertizements issuable in the collector's own office and in that of the judge; while Clause 4, Section 7, Regulation XI. of 1822, continued to constitute the rule for the service of notices in the mofussil, rendering a period of twenty days a sufficient service, whereas in the present instance plaintiff admits the period to have extended to twenty-three days.

I return then to the consideration of the main issue, namely, the balance demanded on the day of sale, by default of which the estate was sold. In the sale proceedings bearing date 4th May 1840, the balance then due (comprising arrears advertized as well as arrears not advertized) is stated to be rupees 288-0-11, and to consist of the following particulars:

Balance of the kists of January and February advertized 1st April,	Rupees 246 6 4
Interest on ditto,	1 0 0
	<hr/>
	247 6 4
Kist of March (unadvertized),	14 0 6
Ditto of May to day of sale,	6 11 3
Interest,	19 14 10
	<hr/>
	288 0 11

I have then to consider, first, the assertion of plaintiff that, in rejection or in substitution of the balance advertized and actually due, the defaulting zemindars were called upon to pay rupees

345-6-4; and second, if the account entered in the sale proceedings be adopted, whether the defaulter's liability to pay rupees 288-0-11, was legally set forth.

There is no dispute now between the parties that the advertised balance of rupees 247-6-4 alone warranted the sale. If that sum had been paid, the necessity and the justification of proceeding to a sale would alike have ceased. But for the reasons following, I think plaintiff has made good her point that at the time of sale, not the payment of the actual balance of rupees 247-6-4, but of the overcharged, not due, balance of rupees 345-6-4, was made the condition of the postponement of the sale.

In the lotbundee or tabular statement in which particulars of estates advertised for sale are entered, it is clear that the balance exhibited originally was rupees 345, with or without a fraction in annas and pie; but the figures of rupees 345 have been written over, and converted into rupees 246. When this was done, before or after the sale, there is no evidence on the face of the document. But how the balance of rupees 345, happened to be struck, may be thus accounted for. In the advertisement when first issued the total balance at the date of the advertisement, that is, 1st April, was shewn to be rupees 454-2-2, principal revenue. Afterwards in anticipation of the sale it became necessary to deduct any intermediate payments. Accordingly two separate payments of rupees 98, and 109-11-10, having been made by the zemindars on the 8th April, a corresponding deduction had to be made from the advertised balance. It appears therefore that, omitting in the first instance the item of rupees 98, only the sum of rupees 109 was deducted from the advertised balance of rupees 454-2-2, leaving rupees 345, apparently due, and afterwards (I say not with respect to the appearance of the original lotbundee which I am now considering, how long afterwards) that the item of rupees 98 was introduced above the other and a new balance struck.

Farther, at the request of plaintiff I required the collector to send for my inspection the book in which bids were entered as the sale went on. This is a rough sort of note book kept by the nazir of the collectorship. It wants the authority of a formal record formally attested. But if its genuineness be otherwise susceptible of proof, it may be permitted to vouch for the fact or facts, of which it was intended to be a contemporary *bona fide* record. I find then in this book that the sale of this estate is recorded, the balance for which the estate was sold is said to be rupees 345-6-4. The bids of the different bidders are entered, and finally the closing of the sale in favor of Mahomed Ahum for rupees 12,000. These entries have been sworn to by the man who, at the time of the sale, wrote them, — the present acting nazir of the collectorship, who then assisted the nazir as a free. A buk-

shee is not a public officer. It may or may not be expedient to accept the services and recognize the situation of a person who does not receive any public emolument. But I think there is no doubt whatever that the bukshet, on the occasion to which I now allude, took the place of the nagir, and that the notes of the sale taken by him formed a *bona fide* sketch of the proceedings. This man further states that to the best of his belief the balance of rupees 345-6-4, was taken by him from the "lotbundee" above alluded to.

Lastly, what taken in connexion with the above two particulars fully corroborates the assertions of plaintiff, with respect to the demand of rupees 345-6-4, is a roobakaree drawn up by the deputy collector on the 6th May, on the subject of the petition, spoken of in the plaint as being presented by the agents of the defaulting zamindars. The roobakaree embodies the statements of the petition. It records the assertions of the petitioners to be that the balance, for the realization of which the sale was advertised, did not exceed rupees 247-6-4; that Nityanund Mojoomdar (touzee nuvees) contrary to the terms of the advertisement made out a claim for rupees 345-6-4; that they were unable to meet this overcharge; and that not paying in the net demand of rupees 247-6-4, the estate had been sold for rupees 12,000. Nevertheless, it was added, they had lodged on the same day the whole sum of rupees 345-6-4, as ordered, with the treasurer. The deputy collector in the roobakaree makes no denial, and seems to admit the truth of these statements. He merely remarks that as the mehal had been sold and the binah (instalment in the way of earnest) had been paid, the revenue could not now be taken; but he observes the money (that is, the rupees 345-6-4) may be left "bina amanut," and the petition will be sent with the account sales to the commissioner. The expression "bina amanut" was of course an oversight. It meant that the money should not be formally credited, but left, without being brought to any particular account, in the hands of the treasurer. It is not clear from the wording of the order whether the rupees 345-6-4 from the 6th of May (and not before) was to be delivered to the treasurer; or whether, as in the body of the petition the money was expressly stated to have been lodged with the treasurer on the 4th May by the deputy collector's order, he permitted the custody of the money to be so continued till further orders. But I cannot come to any other conclusion than that the deputy collector assented to the version given by the petitioners of the sale. It is inconceivable I think that he brought rupees 345, unless they had been called in. It is expressly stated in the petition that they were to pay rupees 247-6-4, but that they were the balance due, owing to a call being made

upon them for rupees 98 over and above the advertised balance. Obviously the petition speaks of facts of which the deputy collector was cognizant; and its presentation and tacit reception seem to me to be irreconcilable with any other supposition, than that of the deputy collector assenting to the facts which it described. And it will be observed that the sum which the petitioner spoke of as being overcharged, namely rupees 98, tallies exactly with the sum, the realization of which appears on the face of the record to have been originally omitted from the "lotbundee."

The same point plaintiff has endeavoured to establish by several witnesses: but I must say, were it not for the documentary evidence just described, I should much doubt whether the statements of these men were to be relied on.

Believing then the plea to be proved that the sale was forced on for an arrear which was *not* due, and part of which had been nearly a month before actually paid, it is of less consequence to discuss the arrear of rupees 288-0-11, assumed in the sale proceedings to have been the sum for which the sale took effect. Obviously between the exaction of rupees 345-6-4, and the preparation of the roobakaree of sale, the *mistake* of demanding rupees 98 over much had been discovered. When and under what circumstances the discovery was made, there is no evidence to shew; but it is clear to me that it was intimated to the defaulting zemindars that the payment of nothing short of rupees 345 could stop the sale; and therefore I think that nothing short of quashing the sale will afford them adequate redress. The item of rupees 288-0-11 includes, as already shewn, the unadvertised balances of March and May, with additional interest; and though the manner in which these items are spoken of as forming portion of the arrear which justified the sale, may be objectionable, I think the intention was merely to exhibit the whole arrears which would have to be recovered from the purchase money. It would appear to be an error, indeed, to charge the defaulting zemindars with any portion of the revenue of the month of May, for by section 22, Regulation XI. of 1822, the purchaser became answerable for the entire list of that month; but whatever right the former might have had to resist the payment of rupees 6-11-3, out of the surplus purchase money, I do not think the exhibition of this claim on the part of the collector can be said to have led to the sale itself.

I therefore quash the sale. The defendants Khubeerooddeen and Mahomed Akhun must account to the proprietors of the estate for moneys profits, with interest from the date on which the amount may be ascertained. The purchase money must be restored: and as it appears by a report received from the collector that besides Rs 416-15-4, charged on account of arrears of revenue, rupees 13-6 has been paid by requisition of the civil courts in

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execution of decrees held against certain of the proprietors, the proprietors recovering the estate under this decree must be held answerable for the payment of that sum.

Government must pay the entire costs of this suit, together with interest on the purchase money till the date of repayment; only from this day the proprietors themselves shall be answerable for interest on the sum of rupees 3989-13-8. In determining the liabilities of the parties on these points, I have followed the decision passed on the appeal of Udwar Sing and others, reported in page 358, Vol. V. of the cases determined by the Sudder Dewanny Adawlut.

THE 27TH AUGUST 1846.

PRESENT: A. SCONCE, OFFICIATING JUDGE.

No. 30 of 27th April 1846.

Appeal against the decree of Moulovee Mahomed Kuleem, Principal Sudder Ameen, dated 27th March 1846.

Nanoo Bebee, Appellant, (Defendant,)

versus

Dhunno Beerkundaz, Respondent, (Plaintiff.)

PLAINTIFF in this action sued Nanoo Bebee, the widow, and Kader Buksh, the son of, one Khoda Buksh, for the purpose of recovering rupees 500, principal (besides interest) lent by him to Khoda Buksh, and in support of his claim produced a bond dated 16th Chyte 1251. Defendants failing to appear, the principal sudder ameen, taking proof of the transaction, decreed the claim.

In appeal Nanoo Bebee declared that after her husband's death she and her son resided at Dacca, and that they were not at Burrisaul, when the notice and proclamation, calling upon them to defend this suit, were served at this station. I accordingly permitted both parties to produce such proof as they might have to offer upon this point: and considering the evidence of the witnesses adduced on both sides, as I am by no means satisfied that the defendants can be considered to have had legal intimation of the institution of the action, I must remand the case for re-trial. It is not clear that defendants were residents of Burrisaul when the processes were served on them; and not only so, but the processes were served at different places, the notice at the supposed house of defendants, and the proclamation at a shop occupied by the deceased Khoda Buksh.

I therefore remit the case to the principal sudder ameen: and seeing that it was a condition of the bond that the loan should not be repaid till Chyte 1255, that is more than three years after the institution of the suit, I suggest to him to consider how far that affects plaintiff's present claim. The value of the appeal stamp will be refunded.

ZILLAH BEERBHOOM.

THE 4TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 11 of 1846.

*Regular Appeal from a decision of the Moonsiff of Doobrajpoor,
Moulvi Alla Alee, dated 29th December 1845.*

Neetanund Adhekaree, (Defendant,) Appellant,

versus

Doorga Churn Chatorjea, (Plaintiff,) Respondent.

THIS suit was instituted, on the 2nd October 1844, on a value of rupees 29-14.

The plaintiff set forth that Sumbhoonath Naik, deceased, was the proprietor of 1 beegah, 4 cottahs of rent freeland situated in mouzah Sreebazar, pergunnah Seubhoon, which at his death came to his three sons, Gunganarain Naik, Khetronath Naik and Seebnath Naik; that Seebnath Naik died without heirs, and the two other brothers divided the land between them, each receiving possession of twelve cottahs; that in the month of Poos 1249 B. S., Gunganarain sold his twelve cottahs to plaintiff and gave him possession; that in the month of Srabun 1250 plaintiff was opposed by the defendant Neetanund Adhekaree, the guardian of Khetronath Naik's (deceased) minor son, Mahanund Naik, and the dispute having been referred to a punchait, it was decided in plaintiff's favor; that the defendant Neetanund Adhekaree again opposed and ousted plaintiff from the 12 cottahs of land on the 23d Asar 1251, and plaintiff is compelled therefore to bring this action to recover possession.

The defendant Neetanund Adhekaree in answer pleaded that the disputed land was not rent free; that it was *mal* included in the pottah received by Sumbhoonath Naik from the zemindar; that the brothers separated in their father's life time, and at his death the eldest brother Gunganarain having declined taking the pottah lands, Khetronath succeeded to them, and subsequently divided them with the youngest brother Seebnath Naik; who sold his share to the plaintiff's nephew Hungsheshur Chatorjea.

In reply the plaintiff affirmed that the *mal* lands of Sumbhoonath, one half of which he had acquired in the name of his nephew Hungsheshur, were distinct from the lands forming the subject of the present suit.

The moonsiff on the 29th December 1845, decreed for the plaintiff, considering his claim to the disputed land proved by the parol evidence adduced in support of it.

I find this decision to be at variance with the record of the suit:—the evidence of plaintiff's three witnesses (the only evidence adduced in support of the claim) does not prove that Sumbhoonath Naik held any land distinct from the *mal* land, a moiety of which had been acquired by each party; it does not prove that Gunganarain had possession of the disputed land, or that the dispute had been referred to a punchait, who had decided in plaintiff's favor; on the contrary, it proves that the disputed land previous to the alleged sale by Gunganarain was in the possession of Khetrnath; and as the plaintiff has failed to establish his title to the disputed land as set forth in the plaint, I decree the appeal and reverse the moonsiff's decision, with costs in both courts chargeable to plaintiff.

THE 4TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

CASE No. 23 of 1846.

*Regular Appeal from a decision of the Moonsiff of Gopalpore, Go-
peenath Das, dated 27th December 1845.*

Jugomohun Singh, Bhoobun Mohun Singh, and Bunmalee Singh,
(Defendants,) Appellants,

versus

Dinobundoo Race, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 13th December 1844, to procure the withdrawal of an attachment of distraint issued by the appellants under Regulation V. 1812, for arrears of rent, amounting with interest to the sum of rupees 41-10 (value of suit) due from respondent and one Muthooranath Das, on account of lands held by them jointly in mouzah Gopalpore, of which appellants are eight annas proprietors.

Respondent denied that he was in possession of more than 16 cottahs of land, bearing a jumma of rupees 1-8, in mouzah Gopalpore, and that he knew who Muthooranath was and where he resided.

Appellants in answer pleaded that the respondent and Muthooranath Das resided in the same house and were in joint possession of 104 beegahs, 5 cottahs of land in mouzah Gopalpore, bearing a jumma of rupees 160-8-14; that their (appellants') demand amounted to rupees 81-11, as stated in the body of their petition to the ameen furosh, and not rupees 41-10, which sum was entered in the abstract of the petition by mistake; and that, therefore, the suit was wrongly valued.

The moonsiff, in his decision, dated the 27th December 1845, found that the suit was correctly valued, because rupees 41-10 was the amount of demand entered in the proclamation and order for sale issued by the ameen, and because the suit might have been brought on a stamp bearing one fourth of the prescribed value, conformably to the Circular Order of the Sudder Court dated the 18th February 1842. The demand he regarded as utterly false, for the following reasons: that the appellant could produce no *ku-boolecut* (or agreement) in support of it; that an account filed by appellant, bearing date 1246 and the alleged signatures of respondent and Muthooranath Das, had a suspicious appearance and was not attested; that the *jumma wasil bakce* accounts of 1246 to 1251, inclusive, seemed from the color of the ink and paper to have been all written at the same time, and were not proved, the attestation of appellant Bhoobun Mohun Singh's son, who was brought forward to swear to them, being insufficient; that the evidence of the three witnesses examined on appellants' part was hearsay; whereas, on the other hand, the evidence of respondent's witnesses proved satisfactorily that he held only 16 cottahs of land in Gopalpore, and that there was no such person as Muthooranath in the village: the moonsiff therefore decreed for the respondent by declaring the attachment void, and respondent released from the demand.

I concur with the moonsiff in his finding in respect to the appellants' demand, which I regard as not proved, and I therefore dismiss the appeal with costs.

THE 4TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

CASE No. 25 of 1846.

Regular Appeal from a decision of the Moonsiff of Doobrajporc, Moulvi Atta Alee, dated 27th December 1845.

Ramkisto Das, Ramkunace Das, Bukronath Das, and Ram Gopal Das, (Defendants,) Appellants,

versus

Hurcemunce Dasia, (Plaintiff,) Respondent.

THIS suit was instituted, on the 11th December 1844, *in forma pauperis*.

Plaintiff states that, on the 20th April 1833, she obtained a decree in the principal sudder ameen's court for the following property, belonging to her deceased husband Neelachul Das, viz. 13 beegahs of rent paying land situated in mouzah Goulara, a third share of 5 beegahs of dewutter land situated in chuk Purikyut, a third share of a tank named Guria, and of three mangoe trees, besides the value of personal property; that owing to resistance on the part of the defendants, her husband's relations, execution of

that decree had never been duly carried out; that possession of two out of the 13 beegahs of rent paying land, and her share of the dewutter land and mangoe trees, had been withheld from her by the defendants; and that she therefore instituted this suit to recover possession of this property with mesne profits, to procure an equitable *butwara* (partition) of the dewutter land and trees, and further to recover possession of certain other property (as detailed in the plaint) belonging to her deceased husband, which had not been included in the original decree: the whole being estimated at rupees 225-11-8.

The defendants in answer pleaded that the suit was untenable; that plaintiff's claim to her deceased husband's estate had been already disposed of and could not be revived; that she was not entitled to a *butwara* of the dewutter land, and that they had not dispossessed her of any part of the property decreed to her.

The moonsiff on the 27th December 1845, passed a decree entitling the plaintiff to possession, after *butwara*, of a third share of the 5 beegahs of dewutter land and of the trees, with mesne profits, from the date of the former award, to be fixed in execution of his decree; also to possession of the third share of five other beegahs of dewutter land situated in chuk Purikyut "if such could be found," and to possession of a place called Sahurguria: and he dismissed the remainder of the claim for want of proof.

This decision being unsatisfactory, especially as every thing had been left for adjustment in execution of the decree, I deputed one of the officers of this court to make a local enquiry, and a *butwara* of the dewutter land in conformity with the instructions detailed in my proceeding of the 28th July 1846.

This officer has to-day delivered in his report, which is not objected to by either party, to the effect that the plaintiff was unable to point out the missing 2 beegahs of rent paying land, that she had never received possession of her share of the dewutter land and trees, the mesne profits of which he had ascertained to amount to rupee 1-4-7 per annum; and that he had made an equitable partition of the latter property agreeably to the partition papers appended to his report, which papers bore the signature of the parties in acknowledgment of their correctness.

I accordingly decree to plaintiff possession of 1 beegah, 13 cottahs, 7 gundahs (being the 3rd share of 5 beegahs) of dewutter land and one tree, bounded and situated as stated in the partition papers above mentioned, with mesne profits at the rate of rupee 1-4-7 per annum from the 20th April 1833, the date of the principal sudder ameen's decree; and I dismiss the claim to the two beegahs of rent paying land, as well as the claim to the other property alleged to have belonged to plaintiff's husband, to which she can have no title, as it was not included in the original decree.

The decision of the moonsiff is reversed: costs of suit to be borne by the parties in proportion to the amount decreed and dismissed.

THE 8TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 46 of 1846.

Regular Appeal from a decision of the Moonsiff of Dhekkabaree, Neel Mudhub Mookerjee, dated 4th February 1846.

Joygobind Banerjee, (Plaintiff,) Appellant,

versus

Mohun Gope and Kunaee Gope, (Defendants,) Respondents.

THIS suit was instituted, on the 27th May 1845, to recover the sum of rupees 47-7-10, principal and interest due on an *ikrar-namah* or agreement.

The plaint set forth that the defendant Mohun Gope, on the 27th Asar 1241, made with plaintiff an adjustment of accounts, and the sum of 16 Sicca rupees having been found due from him, he executed on that date in favor of plaintiff, on the security of the defendant Kunaee Gope, an *ikrar-namah* which stipulated that he should receive the further sum of 9 rupees, thus making a total of rupees 25; to be repaid by instalments; that the sum of 8 rupees was accordingly paid to him on the following day and the balance of 1 rupee on the 11th Asin 1241; that plaintiff had received from Mohun Gope, in the month of Magh 1243, grain to the value of rupees 3-3, deducting which, there was due on the *ikrar-namah* with interest Sicca rupees 44, 8 annas, 8 pic, or Company's rupees 47-7-10, which he accordingly sued for.

The defendant Kunaee Gope in answer objected only to the jurisdiction, alleging that, although the defendant Mohun Gope resided within the jurisdiction of the moonsiff, his own residence was beyond it.

The defendant Mohun Gope filed a petition, after the plaintiff's evidence had been received, to the effect, that he had consented to be made a nominal defendant by the plaintiff, who had given him to understand that he merely wanted to get money out of the security, Kunaee Gope, and would take nothing from him, and that he had consequently filed no answer; but finding that witnesses had been examined and that the matter had assumed a serious form, he had come forward and stated the facts of the case, declaring the *ikrar-namah* to be false and requesting that proof of the above circumstances might be taken from him.

The moonsiff accordingly called for and examined two witnesses in support of the defendant's allegation, and on the 4th February 1846 he dismissed the suit, because the evidence of the witnesses produced in support of the *ikrar-namah* was contradictory, and

because it appeared probable, from the evidence of the two witnesses produced by Mohun Gope, that the suit had been instituted out of enmity.

I never had a case before me where I entertained so little doubt of the justness of the plaintiff's claim as in this. The discrepancies in the evidence of the plaintiff's witnesses pointed out by the moonsiff, are merely nominal, and are accounted for by the fact that the after payments of 8 rupees and 1 rupee were each entered at the foot of the document, and each separately attested by witnesses, some of whom were not present when the deed was originally executed, and consequently they gave different accounts of the story. The petition of the defendant Mohun Gope I regard as a mere ruse, and as it showed that he had wilfully neglected to attend the court within the prescribed period, it ought not to have been admitted with reference to Section 24, Regulation XXIII. 1814. Considering the claim satisfactorily proved, I reverse the moonsiff's decision, and decree against the defendants, respondents, (both of whom reside in the same village,) the amount due on the *ikrar-numah*, Company's rupees 17-7-10, with costs in both courts.

THE 10TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE. .

Case No. 68 of 1846.

Regular Appeal from a decision of the late Principal Sudder Ameen of Beerbhoom, Syud Izzut Allee, dated 3d September 1845.

Ramdyal Mookerjea and others, (Plaintiffs,) Appellants,
versus

Becharam Mookerjea, Mokhtaram Mookerjea, and others, and
Seeb Purshad Dutt, (Defendants,) Respondents.

THIS suit was instituted *in forma pauperis*, on the 21st August 1844, corresponding with the 7th Bhadro 1251, to recover possession of eight annas share of a talook named lot Koolturee, borne on the rent roll of the collector of Beerbhoom at an annual jumma of rupees 306-10-8, together with mesne profits from 1247 to 1250 B. S.

The plaint is in substance as follows. Ramkisto Mokerjea and Kistoharee Mokerjea, the ancestors of the defendants Becharam Mokerjea, Mokhtaram Mokerjea, and others, and of the plaintiffs respectively, were full brothers, and while living in family partnership they purchased, in the name of Ramsoonder Mokerjea, (deceased,) the eldest son of Ramkisto Mokerjea, the disputed talook lot Koolturee, and had joint possession, Ramsoonder's name being recorded in the collector's register of intermediate mutations. The two brothers subsequently (date not given) separated and divided the whole of their substance between them, with the exception of the disputed talook, which they continued to hold

jointly during their life time, each receiving one half of the profits. Plaintiffs succeeded, on the death of their ancestor Kistohuree (date not given) to one half of the talook, and had possession, enjoying a moiety of the profits up to the year 1247 B. S., when defendants Becharam and others, Ramkisto's heirs, sold the entire talook, unknown to plaintiffs, to the defendant Seeb Purshad Dutt, who turned plaintiffs out of possession. They are compelled therefore to bring this suit to recover their rights.

The defendant Seeb Purshad Dutt in answer pleaded that the disputed talook was acquired by Ramsoonder alone; that plaintiffs had no right to a share; and that if they ever had any right, it was barred by lapse of time: defendant held possession of the talook from 1234 to 1238 B. S., as farmer under a lease granted by Ramsoonder; on the 13th Chyete 1235 Ramsoonder executed in defendant's favor a *by bil wuffa* (or deed of mortgage and conditional sale) for a third share of the talook; on the 19th Phalgon 1238 he sold to him an eight annas share of the talook under a deed of sale; on the 29th Asar 1241, Ramsoonder again executed in favor of defendant a *by bil wuffa* for three annas further share, and entered into farming arrangements with him by which he received possession of the entire estate with the exception of chuk Esufpore, which Ramsoonder retained in his own hands; and after Ramsoonder's death his heirs, Becharam and others, sold to him, defendant, their rights and interests in the remaining eight annas share under a deed of sale dated the 13th Jeth 1247: in these several transactions neither plaintiffs nor their ancestor ever appeared as a party, and they never had possession of the talook for a single day.

The defendants Becharam and Mokhtaram filed an answer in support of the pleas of Seeb Purshad Dutt, and they pleaded further that they were koolin brahmins by caste, whose offspring are considered by usage as belonging to the maternal branch of the family; that Ramsoonder's maternal grandfather, regarding him in that light, advanced him money to enable him to purchase the disputed talook, which was acquired in 1208 B. S.; that when the two brothers Ramkisto and Kistohuree separated, they divided all they had jointly acquired or had received from their mother's family, but the disputed talook remained as the exclusive property of Ramsoonder; that plaintiffs' ancestor Kistohuree died in the year 1240 B. S., and if they had any claim to the estate they would have taken measures at the time to secure their rights.

The plaintiffs in their reply acknowledged that Seeb Purshad Dutt engaged the estate in farm in 1234, but all else that was advanced in the answers they denied.

The late principal sudder ameen, Syud Izzut Alee, dismissed the suit, on the 3rd September 1845, on the ground that although the disputed talook appeared to have been acquired when Ramkisto

and Kistohuree were living in family partnership, and the defendants were unable to prove that it was purchased by funds advanced by Ramsoowder's maternal grandfather, yet the plaintiffs, whilst they admitted in a proceeding held on the 8th August 1845, that the two branches of the family had lived in severalty for upwards of 25 years, could produce no document to show that they ever had possession, or were entitled to possession of the share claimed by them, to establish which points oral testimony was insufficient.

I find no grounds for interference with this decision. To establish their claim the plaintiffs seem to have relied on the unsupported evidence of six witnesses, the pith of which is that they, the witnesses, had heard from the defendants that the plaintiffs were entitled to eight annas share of the estate; but that the plaintiffs or their ancestor ever had possession of the talook, either by receiving a share of the profits or otherwise posterior to 1234 B. S., the year in which it was first farmed to the defendant Seeboo Purshad Dutt, the witnesses do not attempt to prove, explaining that the farm was given in payment of debts due by both parties. This is an important fact which if true would have been mentioned in the pleadings; but neither the plaint nor the rejoinder makes any allusion to it. I regard it therefore as untrue, and the plaintiffs' claim, if it ever had any foundation, which I doubt, as barred by lapse of time; and I therefore confirm the principal sudder ameen's decision, and dismiss the appeal with costs in both courts chargeable to plaintiffs.

THE 13TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 116 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Dhekka-baree, Neel Madhub Mookerjee, on the 17th April 1846.

Shaikh Buhāl, Shaikh Tuhāl, Jadhoo Bibi, guardian of Shaikh Nuzeer and Russa Bibi, Wazuha Bibi, and Afsa Bibi, (Defendants,) Appellants,

versus

Subbuk Bibi, Shaikh Muhomudee, and Shaikh Boodoo, (Plaintiffs,) Respondents.

Case No. 117 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Dhekka-baree, Neel Madhub Mookerjee, on the 17th April 1846.

Wasila Bibi, (third party,) Appellant,

versus

Subbuk Bibi, Shaikh Muhomudee, and Shaikh Boodoo, (Plaintiffs,) Respondents.

THE suit, from which the above appeals arose, was filed on the 24th of November 1845, to recover the sum of rupees 7-3-8, arrears of rent.

The plaint set forth that plaintiffs had succeeded to the estate of the late Saleha Bibi, who died in the month of Sraban 1251 B. S. ; that the property left by Saleha Bibi included certain ima lands situated in mouzah Paunchtopee, 12 beegahs of which bearing a jumma of 12 rupees were leased to Shaikh Azeemooddeen and his son Shaikh Buhal, both of whom on the 2nd Bysakh 1251 executed a joint kubooleesut in Saleha Bibi's favor; that plaintiffs had received from them the rent of 1251 in full; that Shaikh Azeemooddeen died in Jeth 1252, leaving heirs Shaikh Buhal, Shaikh Tuhai, and the other defendants named above, who had failed to pay the rent due up to the month of Kartik 1252, amounting to 7 rupees, which plaintiffs sued for with interest.

The defendants in answer pleaded that the suit was false; that the disputed land belonged to Wasila Bibi, under whose *pottah* the late Azeemooddeen had been confirmed in its possession in 1250, in a suit instituted under Act IV. of 1840, against Fuzul Ahmud who had claimed it as the purchased property of his wife Saleha Bibi; that the rent had always been paid to Wasila Bibi; and that plaintiffs had taken advantage of the circumstance of Wasila Bibi having given Saleha Bibi an order on Shaikh Buhal for 12 rupees in payment of a debt, which order the latter had accepted, to revive the claim in a suit for rent.

Wasila Bibi filed a petition as third party, objecting that the disputed land was her property; that she was in possession; and that the plaintiffs had no right to sue the defendants for rent.

Arbitration having been proposed in the lower court, the plaintiffs filed a petition giving the names of five arbitrators by whose award they were willing to abide, and the defendant Shaikh Buhal a similar petition with the names of six arbitrators; and three of these proposed arbitrators, who were in attendance under subpoena issued in this case by the plaintiffs, having been named in both of the petitions, the moonsiff Neel Madhub Mookerjee submitted the suit to their arbitration; and they gave an award in the plaintiffs' favor. The defendant Shaikh Buhal on this filed a petition, objecting that he had not bound himself to abide by their award alone. This petition the moonsiff rejected, and the plaintiffs' vakeels having declared that their clients had no claim against Shaikh Tuhai and the other defendants, who were not a party to the arbitration, he decreed the amount of claim on the ground of the arbitrators' award against Shaikh Buhal alone, releasing the other defendants from responsibility.

The defendants and Wasila Bibi, the third party, preferred separate appeals from this decision, which is both illegal and unjust. It is illegal inasmuch as the provisions of section 5, Regulation XVI. 1798, requiring specific engagements to be entered into by the parties before a suit is submitted to arbitration, had not been observed; and it is unjust, for it not only sets aside the

objections of Wasila Bibi without a hearing, but it has the effect of ousting the defendants Shaikh Tuhai and others, whose interests in the land were undisputed. I therefore reverse the moonsiff's decision, and remand the case for retrial on its merits with reference to the fact of possession.

THE 13TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 119 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Doobrajpoor, Moulvi Atta Alee, on the 24th April 1846.

Deenonath Sirkar, (Plaintiff,) Appellant,

versus

1. Degumber Rooj, 2. Kanthhar Rooj, 3. Sreenath Rooj, 4. Mun-da Bewa Myrance, 5. Anoo Bewa Myrance, (Defendants,)

Respondents.

THIS suit was instituted, on the 11th November 1845, to recover the sum of rupees 106-10-10, principal and interest, due on a bond executed on the 28th Jeth 1241 B. S. by the defendants' ancestor, Sumbhoonath Rooj, deceased, in favor of the plaintiff.

The defendants, who, in the order in which they stand above, are the son, two grandsons, and two daughters-in-law of the deceased Sumbhoonath Rooj, denied the claim, and pleaded that they had all lived separately from the latter and had not taken possession of any part of his estate.

On the 24th April 1846 the moonsiff decreed the amount claimed on the bond against the son, defendant Degumber Rooj, personally, and against the estate of the deceased generally, releasing the other defendants from personal responsibility on the ground that it was not proved that they had taken possession of any part of the assets. On the same ground I uphold the moonsiff's decision, and dismiss the appeal, with costs (the respondents having appeared without summons) payable by each party respectively.

THE 21ST AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 122 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Amdahra, Gholam Buttool on the 20th April 1846.

Khetronath Pal, (Plaintiff,) Appellant,

versus

Bhoobun Mohun Singh, zemeendar, Sham Chund Chowdry, putneedar, Khetronath Mujoomdar, Darogah, Kenaram, Chokeedar, Komul, Chokeedar, Gyanam, Chokeedar, and Puran Lobar, Chokeedar, (Defendants,) Respondents.

THIS suit was instituted, on the 20th May 1845, on a value of rupees 9-3-1.

Plaintiff states that in the year 1235 B. S., he obtained from the zemeendar of mouzah Adithpore a rent free grant of $\frac{3}{4}$ beegahs of *mal* land, where he had dug a tank and planted trees and bamboos; that on the 26th Bysakh 1252, the police darogah, acting under the orders of the magistrate, ousted him from 6 cottahs of this land, situated immediately below the east embankment of the tank, wrongly alleging that it was *chakoran*, or service land, belonging to Kenaram chokeedar; and he, therefore, sued to recover possession of the same together with the value of four bamboos, which the chokeedars had cut and appropriated, making the zemeendar, the putneedar, the police darogah, and the chokeedars of the village, all parties to the suit.

The moonsiff nonsuited the plaintiff on the grounds that as the plaintiff claimed the disputed land as *lakheraj*, (rent free,) and chokeedar's service land is considered as *mal*, he, the moonsiff, was incompetent to try the suit by Circular Order No. 26 of the 8th October 1844; and that the plaintiff ought to have made the Government a party.

The moonsiff appears to have misunderstood the Circular Order quoted by him, which is not applicable to the case; he is also wrong in his premises, for the plaintiff expressly states that the land included in his grant was *mal*; but the case involves a simple boundary dispute, which the moonsiff was quite competent to dispose of; and there was no necessity to make the Government a party; suits of this nature have always been tried, and very properly so, in the presence of the chokeedar and of the land holder, the party next immediately interested. I therefore reverse the moonsiff's decision, and remand the case to be tried on its merits.

THE 21ST AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 123 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Doobraj-pore, Moulvi Attā Alee, on the 22nd April 1846.

Pureshnath Das, (Plaintiff,) Appellant,

versus

Ramdhun Jogee, (Defendant,) Respondent.

THIS suit was instituted, on the 25th November 1845, to recover the sum of rupees 17-2-9, being the amount of principal and interest due on a bond alleged to have been executed by the defendant in favor of plaintiff, on the 9th Bhadro 1251, in acknowledgment of a loan of 15 rupees borrowed by the defendant and his father from plaintiff in the month of Bysakh 1249.

The defendant in answer denied the claim *in toto*, and pleaded that he was able to read and write, and that the truth of the bond might be tested by comparing it with his signature.

The moonsiff dismissed the claim on the grounds that the evidence of the two witnesses produced in support of the bond was prevaricatory; that the plaintiff had been detected in prompting them whilst they were being examined; and that the defendant had practically proved in court that he was able to write, whereas the disputed bond was signed with a mark only.

Seeing no reason to impugn the correctness or justness of the moonsiff's decision, I confirm the same, and dismiss the appeal with costs.

THE 24TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

CASE No. 126 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Doobrajpore, Moulvi Atta Alee, on the 24th April 1846.

Boikoontnath Ghaterjea, (Plaintiff,) Appellant,

• *versus* •

Brijnath Kuberaj and Dwarkanath Kuberaj, (Defendants,) Respondents.

THIS suit was instituted on the 16th September 1845.

The plaint is in substance as follows. On the 23rd Bhadro 1247 B. S., the two defendants (respondents) sold to plaintiff, for the sum of 35 rupees, 7 annas and 5 gundahs share of five beegahs of rent free land situated in mouzah Sugurbera, purgunnah Kurnee, and plaintiff obtained possession; but the *jotedar* of the land, Nagapursbad Dos, having failed to discharge the rent of 1247 in conformity with a kubooleut, which he had executed in plaintiff's favor, plaintiff distrained his crops. Upon which the *jotedar* instituted a suit, No. 24, under Regulation V. 1812, before the collector to try the demand, and got a decree. The plaintiff in consequence instituted a regular suit, No. 4, in the civil court against the vendors and others to recover possession of the property, but failed; by the decision passed therein, on the 10th December 1842, by Moulvi Hosen Buksh, the late sudder ameen of Beerbhoom, the sale was declared invalid, and plaintiff was referred to a separate suit to get back the purchase money. The vendors have since recovered possession of the share, which they had sold to plaintiff, in a suit No. 200 instituted by them in the Doobrajpore court against Poornanund Kuberaj and others; but they have refused on demand to make good to plaintiff the amount

of purchase money and the expences incurred by him in costs of suit, and he therefore sues for the same as follows.

Amount of purchase money,	rupees	35	0	0
Costs of summary suit, No. 24,		8	10	0
Costs of regular suit, No. 4,		38	2	2
Interest,		34	13	0

Total, Rupees . 116 9 2

The defendant Brijnath Kuberaj in answer pleaded that the plaintiff had purchased the share from himself and his brother Dwarkanath Kuberaj, knowing at the time that they had been dispossessed by the other share-holders Poornanund and Ramanund Kuberaj; and that as defendants had no hand in the institution of the false suits brought by plaintiff, they could not be called upon to pay the costs.

The moonsiff, on the 24th April 1846, decreed to plaintiff the amount of purchase money and interest thereon from the date of the late sudder ameen's decision with the proportionate costs; but the claim to recover the costs of the former suits he rejected as untenable.

The plaintiff appealed from the latter part of the above decision, considering himself entitled to the costs sued for, because he was not aware at the time of the sale that the vendors were not in possession, which was the ground on which the late sudder ameen had declared the sale invalid.

I see no reason to interfere with the moonsiff's decision. The defendants have nothing to do with the costs of the summary suit, which plaintiff must be held to have instituted on his own responsibility; and in the suit decided by the sudder ameen they were exempted from costs; plaintiff did not appeal from the sudder ameen's decision, which has become final, and defendants cannot be declared liable in this suit for what they had been exempted from in the other. I therefore affirm the moonsiff's decision, and dismiss the appeal with costs.

THE 25TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 128 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Sumeenooddeen Ahmud, on the 28th April 1846.

Sumod Singh, (Defendant,) Appellant,

versus

Bhuwani Saha, (Plaintiff,) Respondent.

This suit was instituted by plaintiff, on the 29th December 1845, under sections 15, 16, and 17, Regulation V. 1812, to try a demand for rent.

Plaintiff states that he held in mouzah Deogur-bad, belonging to the defendant Sumod Singh's ghatwalee talook Deogur-bad, 14 beegahs of land at a jumma of rupees 26-14, under a pottah granted to him by Gunga Singh and Devce Singh, to whom the land had been assigned by the defendant's ancestor as a maintenance; that the defendant had issued an attachment against his property to recover the sum of rupees 29-8, arrears of rent alleged to be due on account of 1252 B. S., and to save his property from sale, plaintiff had paid the demand, amounting with costs to 33 rupees, which he now sought to recover with interest.

The defendant in answer, pleaded that Gunga Singh and Devce Singh, had nothing to do with talook Deogur-bad; that plaintiff, on the 29th Kartik 1252, executed a kubooleut in defendant's favor for the land entered in the plaint, at a jumma of rupees 26-15, and having failed to discharge the rent, defendant had proceeded against him under Regulation V. 1812, by distraining his property.

The moonsiff decreed the suit in favor of plaintiff, on the grounds that it was clearly proved both by oral and documentary evidence, that the rent of the disputed land had always been received by Gunga Singh and Devce Singh, who were in possession of the same, as part and parcel of certain lands which had been assigned to them as a maintenance; that the plaintiff had cultivated the disputed land in 1252, under a pottah granted by them; that the kubooleut produced by the defendant was inadmissible, it being dated posterior to the date of the advertisement of sale issued consequently to the attachment; and that so far from supporting the defendant's pleas, the evidence of some of the witnesses examined on his part deposed in favor of the plaintiff's claim.

Being of opinion that no sufficient grounds have been shown to impugn the justness or correctness of the moonsiff's decision, I confirm the same, and dismiss the appeal with costs.

THE 26TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

CASE No. 130 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Oohkra, Gobind Chund Chowdhry, on the 8th May 1846.

Hurenath Dutt, Juggonath Sirkar, and Dinonath Sirkar, (Defendants,) Appellants,

versus

Bindabun Rao, (Plaintiff,) Respondent.

THIS suit was instituted, on the 26th September 1845, to set aside an order of the collector of Burdwan, passed on the 28th

August 1845, in execution of a decree awarded under Regulation VII. 1799, against plaintiff, the mookururee talookdar of Panooria, whereby he (the collector) had authorized the decree-holder, Hurenath Dutt defendant, the putnee talookdar of Wulipore, of which Panooria is a dependency, to make a fresh settlement of the plaintiff's talook with other parties.

The plaintiff valued the suit at rupees 151-7, the amount awarded under the summary decree.

The defendant Hurenath Dutt in answer pleaded that the plaintiff's tenure was acquired by Birjmohun Raee, as sudder ghatwal of ghaut Panooria, at an annual rent of 235 Sicca rupees, to recover which defendant has always been obliged to have recourse to summary suits; that the order of the collector, authorizing him to make a fresh settlement had been passed agreeably to rule; and that he, defendant, had accordingly put up the tenure to public auction, and sold it to Dinonath Sirkar for the sum of 155 rupees.

The moonsiff on the 8th May 1846 decreed for the plaintiff, by declaring the order of the collector invalid, as being contrary to section 2, Act VIII. of 1835, by which the tenure could only be sold by the collector for the recovery of arrears of rent, and the re-settlement to be consequently of non-effect.

In appeal it was urged that the suit had been wrongly valued; and that the plaintiff was ghautwal and not a talookdar, and therefore the tenure was liable to be cancelled, on the arrears accruing, under clause 4, section 18, Regulation VIII. 1819.

The objection to the valuation ought to have been made in the lower court, and I see no reason for admitting it, as the plaintiff does not sue for possession. With respect to the other point, it appears that the plaintiff holds Panooria, &c. 11 mouzahs, at a fixed jumma of Sicca rupees 235, a fact which is not denied, and has always styled himself mookururee talookdar, and was recognized as such in the cases of appeal, No. 76 of 1845 and No. 221 of 1844, decided by this court on the 26th and 27th February last, in which cases the same parties were litigants as in the present. The appellant's vakeel admits that the tenure is transferable by sale; there is no question therefore that the tenure is of the description that should have been brought to sale, in satisfaction of the arrears of rent in conformity with clause 7, section 15, Regulation VII. 1799 and Act VIII. of 1835, and, consequently, that the collector's order was illegal. I therefore confirm the moonsiff's decision, and dismiss the appeal, with costs (respondent having appeared without summons) payable by each party respectively.

THE 27TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 134 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Ookhra, Gobind Chund Chowdhry, on the 13th May 1846.

Pooroosotum Bukshee, (Defendant,) Appellant,

versus

Januba Bibi and Bulram Mahato, (Plaintiffs,) Respondents.

THIS suit was instituted on the 3rd February 1846. The plaint set forth that the defendant, on the 22nd Bhadro 1249 B. S., borrowed from plaintiff Januba Bibi, through her servant plaintiff Bulram Mahato, the sum of 40 rupees under a *huwalat putr*, (note of hand,) written on plain paper; that the money has not been paid; and that plaintiffs, after having had a proper stamp impressed on the document, sued to recover the debt with interest, amounting to rupees 56-12-11.

The defendant in answer, filed after the plaintiffs' proofs had been received, denied the claim and pleaded that he was a stamp vendor, and that, therefore, it was most improbable that he should have given an acknowledgment of the alleged loan on plain paper.

The moonsiff, considering the validity of the *huwalat putr* satisfactorily established by the evidence of the subscribing witnesses, decreed the amount of claim to plaintiffs with costs of suit.

I see no grounds for interference with the moonsiff's decision, which appears just and proper, and I therefore confirm the same, and dismiss the appeal with costs.

THE 28TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 135 of 1846.

Regular Appeal from a decision of the Moonsiff of Kytha, Aunowur Alee, on the 20th May 1846.

Ramdya! Chowdhry and Neel Madhub Chowdhry, (Defendants,)

Appellants,

versus

Shamoo Bibi, on demise of Suhubut Shaik, (Plaintiff,) Respondent.

THIS suit was instituted by plaintiff Suhubut Shaik, (deceased,) on the 23d June 1845. The plaint set forth that plaintiff Suhubut Shaik held, in the village of Narainpore, the zemindary of the two defendants, certain rent paying lands, which he had inherited from his ancestor; that in consequence of oppression on the part of the defendants, who had attempted to impose illegal cesses on him, he

relinquished those lands at the close of 1251 B. S., after having paid up his rent in full, and went to reside in another village; that on proceeding to remove the materials with which his dwelling house at Narainpore (comprising five huts) was built, the defendants opposed him; and that he therefore sued to recover the same, or their value 29 rupees.

The defendants in answer, pleaded that the house in which the plaintiff resided at Narainpore, belonged formerly to a deceased ryot named Panochee Shaik; that it was customary in that part of the country for the zemeendar to advance materials for the erection of the ryots' houses, which gave him a lien on the same; and that plaintiff on quitting the estate executed an *ikrarnamah* (agreement) bearing date the 9th Bysakh 1252, by which he relinquished all claim to the house lately occupied by him.

The moonsiff, in his decision dated the 20th May 1846, rejected the pleas advanced by the defendants, considering the evidence adduced in support of them unworthy of credit. He held that a ryot on quitting an estate, having paid up his rent in full, was entitled to remove the materials of his dwelling house, which resembled personal property; and that the zemeendar had no title to such, being the proprietor of the rent only: he therefore decreed the property sued for, or its value, which he estimated at 27 rupees, with costs of suit.

No sufficient grounds having been shown to impugn the justness or correctness of the moonsiff's decision, I confirm the same, and dismiss the appeal, with costs (respondent having appeared without summons) chargeable to each party respectively.

THE 29TH AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 140 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Dhekku-baree, Nrel Madhub Mookerjea, on the 30th May 1846.

Lal Mohun Mookerjea, (Defendant,) Appellant,

versus

Jygodind Bauerjea and Shama Soondree Dibya, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 17th September 1845, corresponding with the 2nd Asin 1252 B. S., to recover the sum of rupees 145-12-9, being the amount principal and interest due on an *ikrarnamah* (or agreement) dated the 12th Kartik 1239 B. S.,

executed by defendant in favor of plaintiffs' ancestor Bijy Gobiud Banerjea, on adjustment of a former debt.

In bar of the statute of limitations the plaintiffs urged that the defendant, on the 12th Magh 1249 B. S., paid the sum of 27 rupees in part, which was recorded on the back of the deed, and promised to pay the balance due.

The defendant, in answer, denied the debt, and pleaded that the suit had been got up against him in consequence of a quarrel regarding the succession to the property of his father-in-law Radhakanth Banerjea, deceased, and that on the date of the alleged payment in part he was absent at the village of Kadkhali.

The moonsiff decreed the suit in favor of plaintiffs on the grounds that the execution of the *ikrarnamah*, the payment in part, the endorsement on the deed of the amount of payment by the defendant's own hand, and the promise to pay the balance due, as alleged, were satisfactorily proved by the evidence of the witnesses examined in support of the claim; and that the defendant had failed to adduce any proof to establish his pleas, although such proof had been duly called for by the court. On the same grounds I confirm the moonsiff's decision, and dismiss the appeal with costs.

THE 31ST AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 128 of 1844.

Regular Appeal from a decision passed by the late Principal Sudder Ameen of Beerbhoom, Syud Izzut Alee, on the 20th April 1844.

Beharee Lol Ditchit, Peearee Mohun Race, and others,
(Defendants,) Appellants,

versus

Maharaja Mahtab Chund Bahadoor, (Plaintiff,) Respondent.

THE particulars of this case have been given in my proceeding of the 22d March 1845.

The point for decision is, in the case of the sale of a mookurree tenure under section 15, Regulation VII. 1799, which did not take place till after some of the kists of rent, of the year following that in which the arrears accrued, had fallen due, whether the former mookurreeedars are answerable to the zemeendar for those kists or the purchaser.

The Sudder Dewanny Adawlut have decided, in special appeal, "that a purchaser is not responsible for kists antecedent to his

purchase; and if after obtaining possession he collects rents due to the former mookurureedars, that was a question to be decided on suit by the said former mookurureedars against the purchaser, and not on the suit of the zemcendar for his rent." On that principle I confirm the decision of the principal sudder ameen, which exonerated the purchaser, and dismiss the appeal with costs.

THE 31ST AUGUST 1846.

PRESENT: F. CARDEW, JUDGE.

Case No. 27 of 1846.

Regular Appeal from a decision passed by the Moonsiff of Ookhra, Gobind Chund Chowdhry, on the 24th December 1845.

Rooknikanth Bukshee, Bhuwanund Bukshee, Pooroosottum Bukshee, and Nurinjun Ghosal, (Plaintiffs,) Appellants,

versus

Sreekanth Tupadar, (Defendant,) Respondent.

THIS suit was instituted, on the 7th January 1845, to recover the sum of rupees 17-13-10, arrears of rent.

The plaint set forth that the three plaintiffs, Bukshee, were the proprietors by purchase of certain lakheraj lands in mouzah Bukhtarnugur known by the name of Gopal Khaer-band-namo, which they had leased to the plaintiff Nurinjun Ghosal; that 10 cottahs of this land was underlet to the defendant, who executed, on the 26th Magh 1232 B. S., a kuboolleut at a jumma of rupee 1-8, the amount of jumma given in a decree, No. 875, which has been passed on account of arrears of preceding years; that the defendant had paid rent in conformity with the kuboolleut up to the year 1243 in full; that in 1244 the tenure, under which the lands were held as lakheraj, was resumed in favor of Government in suit No. 1352, and a settlement having now been concluded with the plaintiffs Bukshee, who had upheld the lease formerly granted by them to Nurinjun Ghosal, they and Nurinjun Ghosal jointly sued the defendant for back rent from 1244 to 1251 B. S., the collection of which had been held in abeyance in consequence of the resumption suit, at the rate entered in the kuboolleut, with interest.

The defendant Sreekanth Tupadar in answer, denied the kuboolleut and plaintiffs' right to possession of the disputed land; he pleaded that the rent of the disputed land, which comprised by measurement 7 cottahs, 2 gundahs only, was 5 annas, 8 pie, at

which rate he had paid, antecedently to the date of resumption, to Ramjy Khan and others, and, subsequently, to the collector of Burdwan.

Ramjy Khan and others filed a petition, as third party, claiming the disputed land as their property, and alleging that they had petitioned the collector to set aside the settlement which had been made with the plaintiffs.

On the grounds that there was no proof that the defendant had paid rent to the plaintiffs at the rate entered in the kubooleent, since the date thereof; that receipts signed by the collector's *tehseel-mohurrir* proved that the defendant had paid to the Government, from the year 1245 to 1249 B. S., rent at the rate of 5 annas, 8 pie as stated in the answer; and further that the collector's settlement papers showed that the settlement made with the plaintiffs Bukshee, had been based on that rate, the moonsiff dismissed the claim on account of the years 1245 to 1249 inclusive, and decreed on account of 1250 and 1251 rent at the said rate of 5 annas, 8 pie, with costs of suit in proportion. On the same grounds I uphold the moonsiff's decision and dismiss the appeal, with costs chargeable to appellant.

ZILLAH BEHAR.

THE 4TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE,
No. 4 of 1846.

Appeal from Principal Sudder Ameen.

Zearut Hosein, (one of the Defendants,) Appellant,

versus

Sufdur Ulee and Moost. Phekun, (Plaintiffs,) Respondents.

FOR possession of 1 anna, 6 dams, 13 cowries share in mouzas Tirbhooa, Moorera, Salempoor, Shabazpoor, and Neazpoor, pergunnah Ookree. Suit laid at Company's rupees 443-7-4.

Sketch of the Family.

Moost. Beebun, wife Defendant,	=	Brother, deceased.	—	MOOST. RUJEEA, <i>alias</i> Rajo, de- ceased, owner, died in 1249 F.	—	Sister, Moost. Phekun, Plaintiff.	—	Brother, Sufdur Ulee, Plaintiff.
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Imam Ulee, Defendant.	•	Zearut Hosein, Defendant.	•	Daughter	=	Akbul Ho- sein hus- band, Deft.
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The plaintiffs state that their sister Moost. Rujeea, *alias* Rajo, died in the year 1249, possessed of 1 anna, 6 dams, 13 cowries share of land in mouza Tirbhooa, in pergunnah Ookree, a house valued at rupees 15, and jewels and cattle to the amount of 106 rupees. To the above property the plaintiffs are heirs. The defendants, on the pretence that Moost. Rujeea in her life time sold the property to Zearut Hosein, one of the defendants, have taken possession, and deprived the plaintiffs of their just rights. They consequently sue to recover them.

Zearut Hosein replies that Moost. Rujeea, ten months prior to her death, sold the whole of the property in dispute to him, duly executing a deed of sale through her authorized mokhtar, under which deed of sale he obtained possession. The other defendants side with Zearut Hosein.

The chief documents filed by defendants to establish their claim were, the deed of sale, dated 15th October 1841, and registered on the 18th October 1841; a copy of the mokhtarnama said to have been executed by the deceased Moost. Rujeea, authorizing the deed of sale to be drawn out; and a kubooleut from the defendant Akbul Hosein to prove possession of the land.

The relationship of the parties is admitted. The principal sudder ameen, Khajeh Heedaet Ulee Khan, decided on the 20th December 1845 that the deed of sale was not executed with the know-

ledge and consent of Moost. Rujee: even the witnesses to the mokhtarname themselves admitted that Moost. Rujee's consent was not obtained to the sale, consequently the defendant had no right to the property in dispute, which must pass to the plaintiffs, the legal heirs. He passed a decree accordingly.

Zearut Hosein appeals on the grounds of the validity of the sale.

This appears to me a very clear case, viz. a fraudulent attempt on the part of Zearut Hosein and others, by a pretended deed of sale, to deprive the plaintiffs of their just rights. The principal sudder ameen's decree of the 20th December 1845, is quite correct, and must be affirmed.

The appeal is dismissed with costs.

THE 11TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 12 of 1846.

Appeal from Principal Sudder Ameen.

Boodhwunt Singh, (Plaintiff,) Appellant,

versus

Abool Husun, the son of Pearee Begum, the wife, and Oomut Fatima, the daughter, of Koorban Ulee deceased, Syud Heedaet Hosein, Deopath Singh and others, heirs of Shew Pershun Singh deceased, Hurbuns Singh and others, heirs of Shew Lal Singh deceased, Hurgobind Singh, heir of Shew Bukhsh Sing deceased, and others, (Defendants,) Respondents.

To reverse a mocurruree grant, and to obtain possession of 10 annas, 12 dams, and 4 cowries share in mouza Chukoureea, pergunnah Juplah, with wasilat.

Sketch of the family of the Mahomedan defendants.

Moost. Pearee Begum, = Koorban Ulee, deceased,
 wife, Defendant. owner.

Son, Abool Husun, Defendant.	Daughter, Oomutool Fatima, Defendant.
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Plaintiff states that, on the 26th Bhadon 1247, the defendant, Abool Husun, granted a mocurruree pottah of the whole mouza Chukoureea, pergunnah Juplah, to the plaintiff and his relatives Hurgobind Singh and Beesumber Singh, at an annual rent of 41 rupees, receiving from them a nuzurana of 100 rupees. Plaintiff got possession of the land in the year 1248, and realized the rent of that year partly by the distraint of the property of Beshoondal

Singh and other defendants. The defendants, Shew Lal Singh, Shew Bukhsh Singh, and Shew Pershun Singh, objected to the distraint, but their claim was disallowed. Plaintiff paid rent to defendant, Abool Husun, for the years 1248 and 1249. With a view of setting aside the mocurruree grant, the defendants, Shew Pershun Singh, Shew Bukhsh Singh, and Shew Lal Singh, at the instigation of one Meehdee Ulee Khan, prevailed upon defendants, Abool Husun, Moost. Peearee Begum, and Moost. Oomutool Fatima, to grant them a mocurruree pottah, which was antedated the 8th Bhadon 1247.

On the 25th May 1844 (1251 Fuslee) the defendants dispossessed plaintiff, and he now sues to have the pottah granted to Shew Pershun Singh and others cancelled, and to obtain possession of his one share and that purchased from Hurgobind Singh, with wasilat for the year 1248.

The defendants Abool Husun, Moost Peearee Begum, and Moost. Oomutool Fatima, file no answers.

The defendant, Heedaet Hosein, replies that he is the son of Koorban Ulee, (the name of his wife is not stated;) that the property in dispute belonged to the grandfather Neaz Ulee; that Koorban Ulee dying before his father had no claim to the property, which passed on the death of Neaz Ulee to Koorban Ulee's brother, Ulee Hydur. Ulee Hydur dying without issue, his property was inherited by defendant (Heedaet Hosein) and his brother Abool Husun. Abool Husun being the elder brother and manager of the estate, granted a mocurruree pottah with consent of defendant, to the plaintiff and his relatives.

The defendants, Deonath Singh and others, the heirs of Shew Pershun Singh, Shew Lal Singh, and Shew Bukhsh Singh, plead that they obtained a mocurruree pottah of the land in dispute from Abool Husun, Moost. Peearee Begum, and Moost. Oomutool Fatima, heirs of Koorban Ulee, prior to the one stated to have been granted to plaintiff; that the heirs acknowledged the validity of the pottah in the civil court in a suit entered for arrears of rent.

The defendant Besumber Singh, the relation of and shareholder with plaintiff, denies having paid any nuzurana to Abool Husun.

Hurgobind Singh defendant admits the sale of his share of the mocurruree to the plaintiff.

Amongst other documents filed by the parties, the plaintiff produces the pottah granted by Abool Husun to plaintiff, and a copy of the petition to the foudaree court presented by Abool Husun acknowledging the validity of the plaintiff's pottah. The defendants produce a copy of their pottah with a copy of a petition filed in the moonsiff's court by Abool Husun, Moost. Peearee Begum, and Moost Oomutool Fatima, admitting the correctness of the defendants' grant. The principal sudder ameen, Khajeh Heedaet

Ulee Khan, in his decision dated 26th February 1846, stated that the plaintiff's pottah had not the cauzee's seal attached to it, had never been admitted to be a valid document in any court; and that Abool Husun, one of the heirs, had no authority to transfer the shares of other heirs without their consent, which in the present instance had not been obtained. On the other hand the mocurree pottah of the defendants contained the signature of all the heirs, Abool Husun, Moost Peearee Begum, and Moost Oomutool Fatima, was allowed by them in the moonsiff's court to be a valid document, and had the seal of the cauzee attached to it. He therefore dismissed the suit with costs.

The plaintiff appeals on the grounds that his claim is proved, and that he is entitled to a decree in his favor.

I see no reason to interfere with this decision of the principal sudder ameen. The property in dispute belonged to Koorban Ulee, and on his death passed to his heirs Abool Husun, Moost. Peearee Begum, and Moost Oomutool Fatima. The defendant, Heedaet Hosein, is no son of Koorban Ulee, but his name is included amongst the defendants, to enable him to plead that the property belonged to the grandfather Neaz Ulee and not to his son Koorban Ulee, who it is pretended died before his father, and thus lost his share of the inheritance. Not a particle of evidence is produced to establish this fact. The plaintiff's pottah is clearly invalid as it only bears the signature of one of the heirs, viz. Abool Husun. The consent of the females Moost. Peearee and Moost. Oomutool Fatima had not been obtained to the granting of the deed.

The appeal is dismissed with costs.

THE 20TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 9 of 1846.

Appeal from Principal Sudder Ameen.

Dookhhurn Singh, (one of the Defendants,) Appellant,

versus

Pokhnarain Singh, (Plaintiff,) Respondent.

To obtain possession of a third share in mouza Khujooree, with wasilat. Suit laid at Company's rupees 2598-6-4.

This case is fully detailed in suit No. 10; the appellant being one of the defendants.

He preferred a separate appeal from the decision of the principal sudder ameen, on the ground that he ought not to be charged with costs of suit, Pokhnarain Sing being the principal person. I agree

in opinion with the principal sudder ameen that the appellant is justly liable with the other defendants to costs of suit. The appeal is dismissed with costs.

THE 20TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 10 of 1846.

Appeal from Principal Sudder Ameen.

Pokhmurain Singh, (Plaintiff,) Appellant.

versus

Dooneea Singh, Dookhhurn Singh, and Nurain Singh,
(Defendants,) Respondents.

To obtain possession of a third share in mouza Khujooree, with wasilat. Suit laid at Company's rupees 2598-6-4.

Plaintiff states that he is joint proprietor with the defendants, Dooneea Singh and Dookhhurn Singh, of the entire village of Khujooree, each holding a third share. In the year 1246, the defendants, Dooneea Singh and Dookhhurn Singh, without the consent of and during the absence of plaintiff, granted a pottah for nine years of the entire village to Nurain Singh, who obtained possession of the land. Plaintiff sues to cancel the lease and obtain possession of his third share, with wasilat from 1246 to 1251 F.

The defendant, Nurain Singh, replies that in 1246 he obtained a lease of the village in dispute from the plaintiff, and his two relatives, the defendants, Dookhhurn Singh and Dooneea Singh, on payment of an advance of 551 rupees. He paid the rent to the end of the year 1247 to the three shareholders jointly. From the year 1248 he paid it separately to each of the parties. The plaintiff and his relatives, the defendants, having made away with part of the produce of the land, have got up this suit to screen themselves from payment of damages.

The defendant, Dookhhurn Singh, states that he, and Dooneea Singh, and the plaintiff, granted the lease to the other defendant Nurain Singh. Dooneea Singh sides with plaintiff and denies having granted the lease.

The principal sudder ameen, Heedaet Ulee Khan, decided on the 17th February 1846, that the granting of the pottah by the plaintiff was not proved, as his signature was not affixed to it. Two of the defendants' witnesses admitted that the plaintiff was not even present at the writing of the deed. He was of opinion that the lease must be cancelled, and that the defendant, Nurain

Singh, the ticcadar, was answerable for the wasilat from the year 1246 to 1251 F. He decreed accordingly. Plaintiff appeals on the ground that the other defendants ought also to be held answerable for the wasilat.

I see no reason for interfering with this decision of the principal sudder ameen. I am satisfied from the proceedings that Nurain Singh kept possession of the land for nearly six years, with the full knowledge and consent of the plaintiff. The defendant, Nurain Singh, is the person responsible for the rent. The appeal is dismissed with costs.

THE 27TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 113 of 1846.

Appeal from Moonsiff.

Nurain Sahoo, Plaintiff,

versus

Goordeal Singh and Bhyrodeal Singh, Defendants.

Gunput Sahoo, (Claimant,) Appellant.

To enter the plaintiff's name in the collector's books as proprietor of 5 annas share in mezuza Mujahidpoor. Suit laid at Company's rupees 87.

Plaintiff states that the defendant sold him a 5 annas share of Mujahidpoor and executed a deed of sale on the 25th Bysakh 1252 Fuslee. Plaintiff got possession of the land, but defendant refuses to allow plaintiff's name to be entered in the registry of the collector's office as proprietor. He therefore sues to obtain an order for that purpose. The defendant admits the sale of the land and authorizes the name of the plaintiff being entered in the registry books.

Gunput Sahoo preferred a claim before the moonsiff, stating that the 5 annas share in dispute belonged to him, he having purchased it on the 25th May 1843, at a public sale under the decree of court—the present suit is a collusive one between plaintiff and defendant to defraud the claimant of his rights.

The moonsiff of Aurungabad, Zeenoolabdeen, on the 26th May 1846, passed a decree in favor of plaintiff, on the ground that the defendant admitted the sale of the 5 annas share. Gunput Sahoo appeals on the grounds that no enquiry was held by the moonsiff touching appellant's claim.

This decree must be reversed, and the suit sent back to the moonsiff's court for re-trial. The moonsiff has not affixed the notice prescribed in Regulation V. 1831, Section 6, Clause 4, nor in any way investigated the appellant's claim.

The appeal is admitted. The decree of the moonsiff is reversed, and the case returned to the moonsiff for re-trial, with order to

carry into effect the provision of Section 6, Clause 4, Regulation V. 1831, and, after receiving the evidence tendered by the parties, to decide on the merits.

The value of the stamp on which the petition was written will be returned to appellant.

THE 27TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 114 of 1846.

Appeal from Moonsiff.

Nurain Sahoo, Plaintiff,

versus

Balgobind and Moost. Jykwur, Defendants.

Gunput Sahoo, (Claimant,) Appellant.

To enter the plaintiff's name in the collector's books as proprietor of 3 pie share in mouza Mujahidpoor. Suit laid at Company's rupees 13-3-2.

This case is fully detailed in No. 113, Nurain Sahoo *versus* Goordial and others, and the same order applies.

The appeal is admitted, the decision of the moonsiff of Arungabad, dated 26th May 1846, reversed, and the case sent back for re-trial, with order to carry the provision of Regulation V. 1831, Section 6, Clause 4, into effect, and, after receiving the evidence tendered by the parties, to decide on the merits. The value of the stamp will be returned to the appellant.

THE 27TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 115 of 1846.

Appeal from Moonsiff.

Nurain Sahoo, Plaintiff,

versus

Surdharam, Defendant.

Gunput Sahoo, (Claimant,) Appellant.

To enter the plaintiff's name in the collector's books as proprietor of 1 pie share in mouza Mujahidpore. Suit laid at Company's rupees 4-6-4.

The case is fully detailed in No. 113, Nurain Sahoo *versus* Goordial and others, and the same order applies.

The appeal is admitted, the decision of the moonsiff of Arungabad, dated 26th May 1846, reversed, and the case sent back for re-trial, with order to carry the provision of Regulation V. 1831, Section 6, Clause 4, into effect, and, after receiving the evidence tendered by the parties, to decide on the merits. The value of the stamp will be returned to the appellant.

THE 27TH AUGUST 1846.

PRESENT : J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.
No. 116 of 1846.

Appeal from Moonsiff.

Nurain Sahoo, Plaintiff,

versus

Moost. Dil Kowur and Peearelal, Défendants.

Gunput Sahoo, (Claimant,) Appellant.

To enter the plaintiff's name in the collector's books as proprietor of 1 anna share in mouza Mujahidpoor. Suit laid at Company's rupees 17-9.

This case is fully detailed in No. 113, Nurain Sahoo *versus* Goordial and others, and the same order applies.

The appeal is admitted, the decision of the moonsiff of Arungabad, dated 26th May 1846, reversed, and the case sent back for re-trial, with order to carry the provision of Regulation V. 1831, Section 6, Clause 4, into effect, and, after receiving the evidence tendered by the parties, to decide on the merits. The value of the stamp will be returned to the appellant.

THE 28TH AUGUST 1846.

PRESENT : J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.
No. 112 of 1846.

Appeal from Moonsiff.

Joommun Khan, (Plaintiff,) Appellant,

versus

Boda Ram, (Defendant,) Respondent.

FOR the balance of rent due on a jageer. Suit laid at Company's rupees 27-10.

The plaintiff states that he is a possessor of a jageer of 15 beegahs of land, situate in mouza Autee Ouwas. This jageer he gave in ticca to the defendant from 1251 to 1257 F. at an annual rent of 50 rupees, on an advance of rupees 50. Defendant paid the rent only up to Poos 1252. Plaintiff sues to recover the balance.

The defendant, Boda Ram, filed no reply. Bhola Singh and Pokhraj Singh, oozurdars, allege that plaintiff has no jageer land: the entire mouza belongs to the joint proprietors Moost. Raneer Phekun and Moost. Raneer Moradun. Moost. Raneer Moradun's share is mortgaged to Buratee Begum, and the oozurdars are her ticcadars. Moost. Raneer Phekun wishes to establish a separate right to a jageer of 15 beegahs in the village, and has brought this suit for that purpose in collusion with plaintiff.

The moonsiff of Behar, Mohumud Ulee Ashruf, on the 25th May 1846, dismissed the suit, on the grounds, that the deed produced by plaintiff to establish his jageer is altogether invalid, has neither been registered, nor even sealed by the casee of the per-

gunnah. No traces of the jageer are to be found in the collector's books. There are two joint proprietors of the village, and one has not the power to alienate any portion of the land without the consent of the other proprietor.

The plaintiff appeals against this decision, merely repeating the grounds set forth in his plaint before the lower court.

This case has been well investigated and no reasons exist for interfering with the moonsiff's decision, which must be affirmed.

The appeal is dismissed with costs.

THE 29TH AUGUST 1846.

PRESENT: J. W. TEMPLER, OFFICIATING ADDITIONAL JUDGE.

No. 118 of 1846.

Appeal from Moonsiff.

Purshun Chund Sahoo, (Plaintiff,) Appellant,

versus

Lukhee Chund, Moost. Roop Kowur and others, (Defendants,) Respondents.

FOR possession of a tank situate in mouza Fakerpoor Yadkad-poor. Suit laid at Company's rupees 215-15-11.

Plaintiff states that he is proprietor of mouza Fakerpoor Yadkad-poor by purchase from Moost. Ameena and Ata Emam. The estate was formerly a rent free tenure, but was resumed by Government and the settlement concluded with plaintiff. Within the limits of the estate is a tank called Jul Dehora. The right of fishing in the tank was declared by the settlement officer not to be included in the settlement made with the plaintiff. The defendants, on the plea that the tank itself was excluded from the settlement, have dispossessed plaintiff. He sues to recover possession.

The defendants plead that the tank, including the muth in the centre of it, was declared by the settlement officer not to be liable to assessment, on the grounds that the tank Jul Dehora had invariably been appropriated to religious purposes by Hindoos of the Surawuk caste.

The moonsiff of Behar, Mohumud Ulee Ashruf, on the 29th May 1846, decided, that it was proved from the proceeding held by the superintendent of settlement that the tank Jul Dehora, with the right of fishery therein, was expressly excluded from the settlement made with the plaintiff as proprietor of the estate on the grounds that it had always been appropriated to religious purposes by the Surawuk caste of Hindoos. He accordingly dismissed the suit.

Plaintiff appeals on the grounds that only the right of fishery was excluded from the settlement.

The moonsiff's decision is perfectly correct, the tank Jul Dehora and the right of fishery therein having been expressly excluded from the settlement with plaintiff as proprietor of the estate. The appeal is dismissed with costs.

ZILLAH BHAUGULPORE.¹

THE 3D AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 1 of 1846.

*Appeal from a decision of the Sudder Ameen of Monghyr, Ali
Buksh Khan, dated 12th December 1845.*

Syud Shah Sukhawat Hosein, (Defendant,) Appellant,

versus

Musst. Bebee Ameena, (Plaintiff,) Respondent.

CLAIM, rupees 681-9-7, bond.

This suit was instituted, on the 4th April 1843, for the recovery of the principal and interest of a bond for *Sicca* rupees 500, said to have been executed by appellant in favor of respondent on the 13th Aghun 1248 F. S.

The defence put in was a denial, on the part of appellant, of his having had any pecuniary transactions whatever with *respondent*, accompanied with an account of certain affairs of that nature which took place between him and Moulvee Emaum Ally, (respondent's son-in-law,) and, after his demise, with the Moulvee's widow, Musst. Nuseebun, who, on the 13th Aghun 1248 F. S., took from appellant three bonds for the amount then due to her, viz. one for 500 rupees, in her own name; one for the same amount, in the name of respondent (her mother); and one for 62 rupees, in the name of Tujumool Hosein, (her brother.)

The appellant pleaded that, under these circumstances, the claim, being a fictitious one, should be nonsuited, in conformity with the Circular Order of the 29th July 1809.

On the 28th September 1844, the former sudder ameen nonsuited the case, as having been instituted under a fictitious name.

In appeal from that decision, it was held by this court that, as the suit had been instituted by Bebee Ameena, in her own name, and the bond was made out in *her* favor, and had been proved by the witnesses to have been so, the case was not liable to be nonsuited, but should have been investigated on its merits, and either *decreed* or *dismissed*, according to the evidence. It was accordingly remanded for re-investigation.

The present sudder ameen was of opinion that the pleas urged by defendant were not worthy of credit, and overruling them, decreed in plaintiff's favor for the amount claimed, with interest, and costs of suit.

In this second appeal, no attempt is made to impugn the correctness of this decision; all that is pleaded is that, while the suit was pending in the lower court, an amicable adjustment was effected between the parties for a *less* sum than what has been decreed, viz. 585 rupees, but, as this settlement was not intimated, by either party, to the sudder ameen *previous to the decision of the suit*, his not having decided according to it, cannot form a ground for appeal, and I accordingly affirm the decision appealed from, with costs against appellants.

THE 4TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 2 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, Ali Buksh Khan, dated the 22d of December 1840.

Musst. Jeysee Coor and two others, (Defendants,) Appellants,
versus

Musst. Deela Coor and others, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 2d of October 1844, by Musst. Deela Coor, Sheo Pershad Sing, and Hurruck Sing, for possession, (by partition,) with mesne profits, of a share of certain invalid jagheer lands, consisting of 21 beegahs, 5 cottahs: the action was laid at Company's rupees 801-10 annas, 16 *krants*.

The declaration set forth that 57 beegahs, 7 cottahs of land, situated in mouzas Sonra and Rampoor Chundunpoor, pergunnah Sulleemabad, granted by Government to Oojear Sing havildar, who died in 1814 A. D. leaving his widow, Jeysee Coor, and three daughters, named respectively, Neet Coor, Kheda Coor, and Deela Coor, his heirs: that Deela Coor *alone* performed his ex-equial rites, and, consequently, was entitled, as *kurta pootree*,* to inherit the *whole* estate; but, as a *verasutnamah* (or declaration of heirship) had been made out in *all* their names, the whole four were registered as the successors of the deceased, and all held possession, paying the Government revenue; that one of the daughters (Neet Coor) having demised, her share devolved upon the survivors, making the share of each to consist of 19 beegahs, 2 cottahs, 6 dhoors, 15 dhoorkees, and a

* *Kurta pootra* signifies a son made, or adopted, but I never heard of *kurta pootree* before.—F. G., Judge.

fraction : that, when the land was measured by the Government officers, previous to settlement, it was found to consist of 63 beegahs, 5 chattacks, for which Rajcoomar Sing, the elder son of Kheda Coor, as *karpardaz* (or manager) of the females, obtained a permanent settlement in their names at a *jumma* or rent of 5 rupees, 8 annas, 3 cowries, but kept the *pottah* lease in his own hands : that, according to this settlement, the share of each came to 21 beegahs, 5 cottahs : that Rajcoomar Sing claimed the whole for Jeysee Coor, and, getting her into his power, sold 42 beegahs, 2 cottahs for 751 rupees to Khakoo Sing and Bhuttun Sing, under a *ke-walla* (or bill of sale) bearing date the 9th June 1843 : that, on hearing of this sale, the husband of Deela Coor (Kummuldharee Sing) interfered, for which he was punished by the magistrate, on the complaint of Jeysee Coor by a fine of 50 rupees : that Jeysee Coor then got the purchasers' names recorded in the collector's office, in the place of the other heirs, and dispossessed plaintiffs of their share, as above stated.

The purchasers Khakoo Sing and Bhuttun Singh denied that the plaintiffs had any rights in the land, which, they asserted, had been in Jeysee Coor's sole possession, from the death of Oojear Sing (in 1812) up to the present time : that Deela Coor had lived apart from the family, with her husband, for upwards of 20 years, in zillah Sarun : that Jeysee Coor was her husband's heiress, according to Section 12, Regulation I. of 1804, and had sold 42 biggahs of land to them, and received the purchase money, which Kummuldharee (the husband of Deela Coor) had forcibly carried off from her house, for which he was punished by the magistrate : that Kheda Coor had acquiesced in the sale, and her son Rajcoomar was a witness to the deed.

Jeysee Coor pleaded that, at the time of her husband's death, her daughter Deela Coor was a mere child, and incompetent to perform his exequies, and that the duty of appointing a *karta pootra* (which a daughter could not be) devolved upon herself, as the widow. That of her own free will she sold the 42 beegahs to Khakoo Sing and Bhuttun Sing, for the payment of debts and expences of pilgrimage, and that the purchase money was taken by Deela Coor's husband : that she herself had held sole possession for upwards of twenty years.

Kheda Coor supported Jeysee Coor's statement. The sudder ameen, considering it to have been satisfactorily established by the extract from the roll of invalid sepoys and their heirs, for the year 1831, filed by plaintiff, and the *kubooleut* of the 17th January 1839, that Deela Coor, with her sisters Neet Coor and Kheda Coor, and the widow Jeysee Coor, had been acknowledged to be the heirs of Oojear Sing havildar ; and that the lands had been settled with them all ; was of opinion, that Jeysee Coor *alone* had no right to sell the property ; and accordingly he passed a decree in plaintiffs' favour,

setting aside the sale; but, as a daughter could not, under the Hindoo law, claim succession, while her mother lived, he rejected so much of plaintiff's claim, and directed that Jeysee Coor should retain possession of the whole during her life, but that the names of the plaintiffs and other heirs of Oojear Sing should be replaced on the collector's books, instead of those of the purchasers. The plaintiffs' costs he ordered to be paid by Jeysee Coor and the purchasers Khadoo Sing and Bhuttun Sing; the other defendants to pay their own costs.

Nothing new is pleaded in appeal. As the petition of plaintiff prays for the reversal of the sale, as well as for possession of the land, and it is engrossed on a stamp of the full value required, the sudder ameen was fully competent to decide upon that portion of the claim; and, as his decision appears to be, in all respects conformable to the Hindoo law, and to justice, I see no reason to disturb it.

The appeal is, accordingly, dismissed with costs, and the decree of the lower court affirmed.

THE 4TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 3 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, Ali Buksh Khan, dated 22d December 1845.

Kheda Koor and others, (Defendants,) Appellants,
versus

Musst. Deela Coor and others, (Plaintiffs,) Respondents.

THE particulars of this case are the same as those detailed in the foregoing one. The appellants merely object to their having been saddled with the payment of their own costs by the lower court. I see no reasons, however, for altering the sudder ameen's orders on that point, more particularly as the appellants have been *gainers* by the decree setting aside the sale of the property.

Appeal dismissed.

THE 10TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 4 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, Ali Buksh Khan, dated 24th December 1846.

Syud Sabir Ali, (Plaintiff,) Appellant,
versus

Syud Atta Emaum, son of Meer Ahmud Hosein, (vendor of the property,) deceased, and others, (Defendants,) Respondents.

CLAIM to render absolute a conditional sale of an 8 annas share of mouza Allawulpoor, and of a 1 anna, 7 dam share of mouza

Kewra Rajowrah, *altumgha* (or regally granted) villages in pergunnah Maldah, and to recover mesne profits of the former. Action laid at Company's rupees 663-12-5-17 k.

The plaintiff's declaration (filed on the 27th February 1844) sets forth that Meer Ahmud Hosein (deceased) on the 25th Cheyt 1221 F., executed a *bye bil wuffa* (or conditional sale) of the above named property, in his favor, for three years, and received the purchase money, amounting to Sicca rupees 501, for which he granted a separate acknowledgment: that the 8 annas share of Al-lumpoor, being held under a *mocurruree* (or permanent) lease, at a *juma* (or rent) of 71 rupees by Kurrim Ally, and the 1 anna, 7 dams, of Kewra Rajowrah being similarly held, at a *juma* of 10 rupees, by Cheyta Ray, both those persons executed *ikrarnamahs* (or obligations) stipulating for the payment of their respective rents to plaintiff, who received them accordingly: that, when the term of the *bye bil wuffa* had expired, without the redemption of the mortgage by Meer Ahmud Hosein, the plaintiff applied for its foreclosure, under Regulation XVII. 1806, in the zillah court of Behar, on the 21st January 1823; but the mortgager did not pay the money within the prescribed period of one year, and the case was struck off on the 28th November 1834: that the original bill of sale, which plaintiff's vakeel had received back from the court, having been lost in consequence of the vakeel's death, plaintiff procured a copy of it from the registry office: that plaintiff has held possession of the share of Kewra Rajowrah from the date of the *bye bil wuffa* up to the present time, by receiving the rents from the *mocurrureedar*, until it was attached by the revenue officers, and after that, from Syud Mehdee Ally theekadar: that he received the rents of the 8 annas share of Allawulpoor from its *mocurrureedar* up to 1240 F. S., but, owing to the property having been resumed under Regulation II. 1819, and the deputy collector who made the settlement having (after he had, in the first instance, admitted plaintiff to engage for it) concluded a settlement with Meer Kurrim Ally, he, plaintiff, has been dispossessed of that property since 1241 F. He, accordingly, sues for possession of the latter, with mesne profits, and to get the conditional sale of the whole made absolute. That he had instituted two previous suits in the sudder ameen's court, both of which had been nonsuited by that officer.

Syud Kurrim Ally, with Musst. Kureema, Syud Akrum Ally, Syud Muzher Ally, *alias* Choolun, Syud Wahid Ally, and Musst. Mootfun Nissa answered that the alleged mortgagor, Syud Ahmud Hosein, possessed *no rights* in the property claimed by plaintiff, and that neither he, nor the mortgagee, nor the alleged *mocurrureedars*, ever had possession of it; that it belonged to them (the defendants) by inheritance, and was held by them exclusively.

Syud Atta Emaum admitted, in his answer, that his father, Syud Ahmud Hosein, had executed the *bye bil wuffa* in plaintiff's favor. Musst. Bachun and Jumeela did not defend the suit.

In reply to a question put to him by the lower court, the plaintiff's vakeel stated *verbally*, that the property originally belonged to Musst. Ashoorun, who sold it to Musst. Wasila, by whom it was made over under a *tumleek* (or assignment) to Ahmud Hosein, the mortgagor.

The sudder ameen remarked, in his decision, that the plaintiff's statement in regard to the original of the deed of *bye bil wuffa* having been lost, at his vakeel's death, was not borne out by his previous statement when the suit was pending before the late sudder ameen, viz., that he was unable to file the document in consequence of its having been engrossed on an inferior stamp: he also observed that the *copy* which the plaintiff now produced, made no mention of any *specific shares* in mouzas Allawulpoor and Kewra Rajowra having been sold conditionally; it merely specified certain *mocurruree jumas* of 75 rupees, and 10 rupees, which had been subsequently set aside by the settlement under Regulation II. 1819, and which not being now in existence could not, in the sudder ameen's judgment, be decreed in plaintiff's favor: he found that plaintiff's petition for the foreclosure of the mortgage had been struck off the file owing to *his own* default, and not in consequence of the mortgagor having failed to respond to it; he, likewise, discovered that Kurrim Ally, whom plaintiff calls the *mocurrureedar*, in an answer filed by him before the moonsiff of Sooruj Gurra, admitted that he never got possession of the *mocurruree* tenure granted to him by Musst. Wasila, owing to the latter and Ahmud Hosein having had no interest in the property; also that the possession by right of inheritance of Kurrim Ally and others for a long period, had been proved by certain *copies* of depositions filed by defendants. For these reasons, he considered the claim barred by the law of limitations, and dismissed the suit with costs.

In this case the sudder ameen has altogether omitted to enter into any investigation of the rights possessed by the vendor (Ahmud Hosein) in the property sold, upon which point the whole question hinges. It is immaterial whether plaintiff's story about the original deed having been lost, on the death of his vakeel, be borne out by the record of the former suit, or not, for the copy obtained from the office of register of deeds, if written on a stamp of the same value as the original deed, and if proved by the subscribing witnesses, would suffice under Section 11, Regulation XXXVI. 1793, to prove the sale: but the sudder ameen has not called for any witness to that deed, or to the *ikrarnamahs* said to have been executed by Kurrim Ally and Cheyta Roy, (only one of which has been filed,) neither has he taken the *viva voce* examina-

tions of the defendant's witnesses, contenting himself with the copies of certain depositions taken by the deputy collector while making the settlement. He ought also to have called for the roobacarry of settlement of the 29th January 1839, which is not to be found with the record; and to have called upon plaintiff for proof of his possession of the 8 annas of Allawulpoor up to the year 1240 F. S., and of his having received the rents of the 1 anna, 7 dams of Kewra Rajowrah from the date of the conditional sale up to the present time. He should likewise have ascertained whether the rules contained in Section 8, Regulation XVII. 1806, were duly observed or not. For these reasons, I remand the suit for re-investigation: the usual order for the adjustment of costs, and refund of stamp duty.

THE 11TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 5 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, Ali Buksh Khan, dated 26th December 1845.

• Tarun Lal, (Defendant,) Appellant,

versus

Bhuttooram Sahoo, (Plaintiff,) Respondent.

CLAIM, Company's rupees 731-4-2½.

This suit was instituted by respondent, on 2nd December 1844, for the recovery from appellant of a sum of Sicca rupees 466, advanced for grain under a bond bearing date the 2nd Falgoon 1250 F. S., together with Sicca rupees 219-9-12½, being the penalty for breach of engagement. The conditions of the bond being that defendant should furnish 300 rupees worth of wheat, and 166 rupees worth of gram according to the *nerick* (or price current) in force at the golas of two muhajuns therein named; or, in default, to make good the value of *that quantity* of grain, at the Calcutta market price.

The defendant, although he acknowledged the notice served upon him on the 23rd December 1844, did not file his answer until the 1st of August following, (his property having been attached under Regulation II. 1806 in the interim): he admitted the bond, but pleaded that he had furnished Sicca rupees 185-15 worth of wheat, and Sicca rupees 152-7-12 worth of gram, to one Bullee Fotadar, whom he calls a *gomashia* (or agent) of plaintiff, at his gola at Jukurpoora.

Witnesses were examined on both sides, and the sudder ameen, after hearing the evidence, decreed in plaintiff's favor, remarking that, as defendant could not produce any receipt signed by plain-

tiff himself, and no payment had been entered on the back of the bond, he could place no reliance upon the *yaddasht* (or memorandum) without any signature, which he produced, nor could he credit the evidence of the witnesses, whom plaintiff brought forward to prove that he had furnished the grain to Bullee Fotadar, especially, as the bond contained no stipulation for the payment being made to any such person.

Nothing new is pleaded in appeal. I do not find any proof that Bullee Fotadar was a *gomashita* of the plaintiff. On the contrary, his witnesses state that the person who acted in that capacity, at the time, at the gola named, was one Fuqueera Bhugguth: Bullee Fotadar being only an inferior servant, who had no power to grant receipts. Moreover, it is very strange, if defendant had really furnished the grain, that he should have neglected to defend the suit for a period of eight months, and that he should have kept silent on this subject until after the death of the person to whom, he says, the payment was made. I look upon the defence as a mere attempt to evade payment of a just debt, and see no reason to disturb the decision of the lower court, which is hereby confirmed, with costs payable by the appellant.

THE 17TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 18 of 1846.

Appeal from a decision of the Principal Sudder Ameen, Mahomed Majid Khan Bahadoor, dated 21st February 1846.

Kaleepershad Panday, for himself and as guardian of Doorgapershad, a minor, and Lutchmee Dutt Panday, (Defendants,) Appellants,

versus

Rajah Bidanund Sing, (Plaintiff,) Respondent.

CLAIM, Company's rupees 3,627-12-4, on account of arrears of rent, with interest and costs.

This is an action for the reversal of an order passed by the commissioner of revenue, setting aside a summary decree, for the arrear claimed, given in plaintiff's (respondent's) favour by the collector of Monghyr.

The plaint set forth that, under the plea that they held a *putnee* lease from the late proprietor, the defendants had made away with the profits of mouzas Punsacen and others, which accrued in 1249 F. S. That plaintiff instituted a summary suit, before the collector, for the rents of that year, which he estimated at the *kham pyduwar*, (or gross produce,) deducting the expences of collection, and obtained a decree for the amount claimed, which the commissioner of revenue, on the 25th January 1844, set aside as illegal.

The defendants (appellants) in their answer referred to the defence made by them in the case of mouza Mummam, for the rent of which a similar action had been brought, and which was to the effect that plaintiff could not legally recover *enhanced* rents under Regulations VII. 1799 and VIII. of 1831, except under a *regular* suit, and that the amount of rent claimed was excessive. They also contended for the validity of their alleged *putnee* tenure.

The principal sudder ameen decreed the claim, for the reasons given by him in another similar case (No. 83) between the same parties, decided on the same date, which is now pending in appeal before the Court of Sudder Dewanny Adawlut.

After this appeal had been preferred, a reference was made to the Superior Court, for instructions in regard to the disposal of this and the two following suits, pending the decision of the case before that tribunal, and the reply, this day received, (No. 1163 of the 7th instant,) is to the effect that they should be decided at once by this court, to the best of its judgment.

The decisions of the principal sudder ameen in this and the other cases are based upon one, passed by him on the 28th February 1845, in which Shetaubee Lal and others were appellants and the respondent in this case the other party, and which was confirmed by this court in appeal on the 9th June 1845;—the reasons for that decision and its confirmation, being that all agreements between the former proprietor and the *putneedars* became null and void on the sale of the estate for arrears of revenue, and, consequently, that the purchaser was entitled to rent according to the *hustabood jumma* (or actual rents payable by the cultivators.)

There can be no doubt of the zemindar's right to cancel the tenure in the present instance, as it is of the same nature as the one above referred to, but he could not legally demand *enhanced* rent without having previously served upon the tenant the notice required by Section 9, Regulation V. 1812, nor could the collector, under Section 16, Regulation VIII. 1831, enforce *summarily* the payment of higher rents than those which the tenant had paid in past years, except upon proof of *bond fide* written engagements. In the present instance, the claim preferred to the collector was not properly cognizable as a *summary* suit, and the commissioner was, consequently, fully competent, under Section 4, Regulation VIII. 1831, to set aside the illegal award of the collector. Under these circumstances, the plaintiff's action *for the reversal of the commissioner's order* cannot lie, although there is nothing to prevent his bringing forward a regular suit, *de novo*, for the rent claimed, which can be tried, on its merits, without reference to the summary proceedings, which have been declared, by competent authority, to be null and void. Under these circumstances I decree the appeal, and reverse the decision of the lower court with costs payable by respondent.

THE 17TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 19 of 1846.

Appeal from a decision of the Principal Sudder Ameen, Mahomed Majid Khan Bahadoor, dated the 21st February 1846.

Kalee Pershad Pandey and others, (Defendants,) Appellants,
versus

Rajah Bidanund Sing, (Plaintiff,) Respondent.

CLAIM, rupees 2,198-14-5, arrears of rent for 1249 F. S.

The circumstance of this case being similar to those of No. 18 of 1846, the same orders are applicable to both.

THE 17TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 20 of 1846.

Appeal from a decision of the Principal Sudder Ameen, Mahomed Majid Khan Bahadoor, dated 21st February 1846.

Kalee Pershad Pandey and others, (Defendants,) Appellants,
versus

Rajah Bidanund Sing, (Plaintiff,) Respondent.

CLAIM, rupees 2,110-14-8, arrears of rent.

This suit differs from the two preceding ones, in so far that the plaintiff has brought his action, for the recovery of the rent claimed, *in a regular form*, after it had been instituted summarily and struck off the file by the collector, for informality, with permission to re-institute it. There was therefore nothing to prevent its being investigated on its merits.

However, as the principal sudder ameen has altogether omitted to hold any separate enquiry in the case, I remand it for re-investigation, in order that he may take evidence from the plaintiff of the alleged service of the notice under Section 9, Regulation V. 1812, and of the rent demanded being as stated by him, and also call upon the defendants for any evidence they may have to produce in refutation of those points: the usual order for refund of stamp duty, &c.

THE 17TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 168 of 1846.

Appeal from a decision of the Moonsiff of Soorujgurra, Moulvee Furhut Ali, passed on 25th May 1846.

Gouhur Khan and Roushun Khan, (Defendants,) Appellants,
versus

Sheikh Kurreem Bux, (Plaintiff,) Respondent.

CLAIM, Company's rupees 31-11-3.

This suit was instituted by respondent to recover from appellants the amount paid by him, as their surety, to the *Ameen** of pergunnah Monghyr. He states that one Ummeer Sing, having distrained the property of appellants and Gureebullah, for a demand of rent, amounting to 25-4 annas, the latter gave him as their surety for the institution of a summary suit by the defaulters to contest the demand; that the attachment having been upheld by the collector, the plaintiff was called upon to make good the claim, and that he paid to the *ameen* the amount, for the recovery of which he now sues.

The defence is that 40 maunds of grain, belonging to the defaulters, had been made over to plaintiff, when he became their surety, and that he sold it for rupees 34-10-10, out of which he paid the *ameen* the 31-11-3, leaving a balance of rupees 3-4-1 due to them (the defendants.)

The moonsiff disallowed this plea, and decreed in plaintiff's favor.

In appeal it is pleaded that the action brought is contrary to the stipulations contained in the security bond, by which plaintiff pledged himself to produce the property attached; when called upon, instead of which he paid the money; and that the moonsiff had decided the case without calling for the attachment papers; and Roushun Khan pleaded that the attachment had not issued against him,

It was incumbent upon the moonsiff to have called for the security bond, and ascertained what its stipulations were, before he decided the suit. I accordingly remand the case, in order that this omission may be supplied, and the investigation rendered complete. The attachment papers should also be called for, in order that the objection made by Roushun Khan may be set at rest.

The usual orders for the refund of stamp duty and adjustment of costs.

THE 17th AUGUST 1846.

PRESENT: P. GOULDSBURY, Judge.

Case No. 167 of 1846.

Appeal from a decision of the Commissioner of Monghyr, dated the 25th May 1846.
Shereef (Plaintiff) vs. Gureebullah and Ummeer Sing (Defendants.)

Georgial Panch Kanoon and Revenue Code, 1846, (Defendants.)

On the 31st rupees 3-4-1 annas principal and interest of a loan or note of hand dated the 25th May 1846.

* Or commissioner appointed for the sale of distrained property.

The plaint sets forth that, on the above date, the respondents, together with their father Muttroo Sahoo, (since deceased,) borrowed from appellant Sicca rupees 16-11, and executed the *teep*: that Muttroo Sahoo subsequently died after paying 2 rupees only of the debt, which now amounts (with interest equal to the principal) to the sum claimed.

The respondents denied *in toto*, and pleaded that their father died in 1242 F. S., before the alleged execution of the *teep*: that Ramdial Sahoo lived in Calcutta till 1245 F., and that Goordial has been, for a long time, employed in the zemindarry catcherry at Gogree.

The moonsiff dismissed the claim, on the grounds that the bond had been written on *old* paper with *fresh* ink, and the names of the two subscribing witnesses, examined in support of it, had been written *underneath* those of the others, and also that plaintiff's *buhce khata* (day book,) which was not produced when first called for, appeared suspicious.

I find that, although the whole *five* subscribing witnesses to the *teep* were summoned by the moonsiff, only two of them were examined, and no reason is assigned, on the proceedings, for the absence of the rest. I accordingly remand the case, in order that the enquiry may be completed, by taking the evidence of those three persons, if they can be found. The usual order for refund of stamp duty, &c.

THE 18TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 169 of 1846.

Appeal from a decision passed by the Moonsiff of Noorgunge, Moulvee Moheeoodeen, on the 30th May 1846.

Chundeeperashad and others, (Plaintiffs,) Appellants,

versus

Bhowun Mahton and others, (Defendants,) Respondents.

CLAIM, Company's rupees 183-7-6.

This suit was instituted by the plaintiffs, on the 7th August 1845, to recover from defendants the amount (with interest) of a decree, passed by a former sudder ameen of Monghyr on the 28th December 1821, which, not having been carried into execution within twelve years, rendered it, in plaintiff's opinion, incumbent upon him, with reference to Constructions Nos. 3 and 1343, to institute a fresh suit.

The defence made was that the original decree had been passed *ex parte*, owing to the neglect of the defendants' ancestor, and that the amount had subsequently been paid, and the decree returned,

but that it had afterwards been surreptitiously obtained by the plaintiffs, who now fraudulently sue for the amount after a lapse of upwards of twenty-five years.

The moonsiff considered such a suit to be inadmissible, and dismissed the claim.

The plaintiff has evidently misunderstood the meaning of the Constructions to which he refers, for it is clearly stated in Constructions Nos. 136 and 1348, that decrees *may* be executed after twelve years, *provided good and sufficient cause for the delay be shewn*, and consequently there was nothing to prevent his applying for execution in the usual manner. He has, however, preferred to go to the expence of instituting a *regular suit*, which must be tried under the law of limitation applicable to such matters. In the present instance, if the cause of action be held to date from the decree of the sudder ameen, a period of nearly twenty-four years has elapsed since it arose, and consequently, as plaintiff has assigned no satisfactory reason why he did not enforce it within the period of twelve years, his claim cannot, under the provisions of Section 14, Regulation III. 1793, now be admitted. For these reasons I dismiss the appeal with costs.

THE 18TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 170 of 1846.

Appeal from a decision of the Moonsiff of Monghyr, Ali Buksh Khan, dated the 29th May 1846.

Roopchund Bhuguth, (Defendant,) Appellant,

versus

Sheikh Ruheem Bux, (Plaintiff,) Respondent.

CLAIM, Company's rupees 23-10-9-12, on account of arrears of pay from 8th June 1843 to 19th June 1844.

The plaint set forth that a 10 anna share of mouza Hurpoor was held, in the following portions, by the undermentioned persons, viz. 4 annas by Mr. John Francis Caston; 3 annas by Khoda Bux; and 3 annas by defendant.

That plaintiff was appointed gomashtha for the collection of their respective portions of the rent, *by all three*, on a salary of 5 rupees per month, under a *sunnud* (or warrant of office) signed by them all. That on the 19th of June 1844, a *wassil bakce* account was made out and signed by Mr. Caston, which exhibited a balance of rupees 66-11-6, due to plaintiff, of which Mr. Caston and Khoda Bux paid their respective shares, leaving 20 rupees, 3½ annas, due by defendant. Plaintiff sues for this amount with interest.

The defendant did not deny that such a *sunnud* had been given, but attempted to shew that the 5 rupees, agreed upon by the three co-sharers who signed it, was for the collection of the rents of the *whole* mouza, and that the holders of the other 6 annas share refused to ratify it, thereby leaving plaintiff's wages, payable by the holders of the 10 annas portion at only 3 rupees, 2 annas per mensem.

The moonsiff, finding it to have been proved by the *sunnud* signed by defendant and his two co-parceners, and by the rest of the evidence, that they had *all* agreed to pay plaintiff at the rate of 5 rupees a month for the collection of *their* rents only, and that both Mr. Caston and Khoda Bux had paid their shares of the same, while defendant had not liquidated his, decreed in plaintiff's favor for the full amount claimed.

No sufficient ground has been shewn by appellant to impugn the justness of this decision, which is hereby confirmed under the provisions of Clause 2, Section 2, Regulation IX. of 1831, with costs payable by appellant.

THE 25TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 171 of 1846.

Appeal from a decision of Moulvee Furlhut Ally, Moonsiff of Soorujgurra, passed on 5th June 1846.

Mr. George Collis, (Defendant,) Appellant,

versus

Musst. Beebee Ameena, (Plaintiff,) Respondent.

CLAIM, rupees 32-4-3, for possession of a 5 annas, 17 gundahs, 16 cowries share of mouza Jhuckerpoor, and to set aside a bill of sale for the same, dated 12th July 1845.

The respondent instituted this suit on the 24th December 1845, claiming the right of pre-emption in the above property by reason of her being the proprietress of a 3 annas, 15 gundahs, 14 cowries share in the estate: she states that, in consequence of her share having been leased out to another party (Moorit Coor,) she did not know of the sale to appellant, of the share of Sidhoo Loll, until the issue of the usual notice from the collectorate when a mutation of names was applied for, (the 25th Aughun 1253,) when she *immediately* sent one of her servants to tender the purchase money to the vendor and purchaser, both of whom refused to take it.

The defence set up by the purchaser (for the vendor did not appear) is that plaintiff's interest in the property is merely a *nominal* one, arising from Cazi Emaum Ally (the real proprietor) having purchased the same in the name of plaintiff's husband Azim Ally,

one of his slaves: that two days after his (Mr. Collis') purchase he informed the heirs of Emam Ally, (Feda Hosein and Akber Ghazi,) neither of whom objected at the time although they afterwards put up the plaintiff to bring this action.

The moonsiff, after calling for an exposition of the law from the Mahomedan law officer, decided in plaintiff's favor on the grounds that she had brought forward her claim within one month after she had received intelligence of the sale, and that Feda Hosein and Akber Ghazi had nothing to do with the property.

In this case it is clear that the plaintiff is the *recorded* proprietress of the share mentioned in the petition of plaint as hers, and which her witnesses state belongs to herself: no one else has come forward to claim it, and consequently the purchaser's assertion that Feda Hosein and Akber Ghazi are the *real* proprietors (of which he has failed to adduce satisfactory proof) cannot avail him. The moonsiff's decision is in strict conformity with the Mahomedan law, and I see no reason to disturb it.

Appeal dismissed with costs.

THE 25TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 172 of 1846.

Appeal from a decision of Moulvee Mohecoodeen, Moonsiff of Noor-gunge, dated 8th June 1846.

Chand Khan, (Plaintiff,) Appellant,

versus

Munnoo Muhton, (Defendant,) Respondent.

THIS suit was instituted by appellant for the recovery of the value of two cows, which respondent had in his charge, together with that of their milk; the whole estimated at Company's rupees 31-12-9.

It appears from the record that appellant made over seven cows to respondent to graze with his own cattle, and that the latter returned only four of the number. The respondent's plea is that the other three were killed by tigers, whilst appellant maintains that only one was so destroyed, and that respondent promised to make good the value of the other two.

Witnesses have been examined on both sides, and the moonsiff has given the case against the appellant, but ordered that each shall pay his own costs.

It appears from the appellant's petition of plaint, and from the evidence of some of his witnesses, that the matter was investigated by the zemindar Bechoo Ram Chowdry, who decided that respondent should restore the two cows in question, which he then promis-

ed to do, but the zemindar has not been named as a witness. I accordingly remand the suit in order that the munsiff may take his evidence and try the case *de novo*: the usual order for refund of stamp duty, &c.

THE 24TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 7 of 1846.

Appeal from a decision of Moulvee Ally Bux Khan, Sudder Ameen of Monghyr, dated 16th February 1846.

Synd Sufdur Hosein Khan, and Musst. Zynub, widow of Shah Mahomed Hosein, deceased, (Defendants,) Appellants,

versus

Musst. Budeeha, (Plaintiff,) Respondent.

THIS suit was instituted, on the 30th December 1842, by respondent, to recover the amount of Company's rupees 996, 5 annas, 16 gundahs, 2 cowrees, due from appellants and others, (exempted by the lower court,) under an instalment bond executed by Mahomed Hosein, on the 4th *Shawal* 1236 *Fuslee*, in favor of the respondent's husband Shekh Moula Bux.

The plaint set forth that the bond in question stipulated for the payment of Sicca rupees 1450, in ten instalments; the first (of 100 rupees) to be discharged in 1236 F. S., and the remaining nine to be liquidated, from 1237 till 1245 F. S., by annual payments of 150 rupees each: that, for the payment of this debt, the share of Musst. Zynub, in pergunnah Ubhyepoor, was mortgaged to the lender, on condition that whatever profits remained, after the payment of each year's instalment, should be enjoyed by Mahomed Hosein himself: that as the *sujjada-nisheen* (or superior of the *durgah*) at Moulanugur collects the whole of the rents of the pergunnah, and divides the profits among the several co-parceners, a letter was written to Shah Mahomed Wajid, the then superior, to that effect, and he, accordingly, paid four instalments (from 1236 to 1239 F. S.) to plaintiff's husband and herself: that, from 1240 F. till 6th of *Zekad* 1243, a further payment of Sicca rupees 533-9-1-6 was made by the same, and a sum of 31 rupees liquidated by the present *sujjada-nisheen*, since which no further payments have been made: that, in the end of the month of *Rubbee ool awul* 1247, Musst. Zynub had an account (*wassil ba-kee*) made out by Nirput Lal Dewan, which, after crediting the sums abovementioned, shewed a balance of Sicca rupees 794-6-18-14, still due, and to which Zynub affixed her seal.

Syud Sufder Hosein admitted the instalment bond, but pleaded that the full amount of the debt had been realized from the usufruct of the property mortgaged.

Musst. Zynub pleaded ignorance of the *kistbundée*: that she never has had possession of her husband's property, and that she did not affix her seal to the *wassil bakee* account.

The sudder ameen remarked that Sufder Hosein had failed to adduce proof of his assertion that *full* payment had been made, either in the shape of receipts or parole evidence, while plaintiff (respondent) had proved by witnesses that an account had been made out (as stated in the plaint) shewing a balance due of rupees 794-6-18-14. He, accordingly passed a decree for the amount claimed, against Sufder Hosein and Musst. Zynub, and the *estate* of the two daughters of Mahomed Hosein.

The principal plea brought forward in appeal from this decision is that the *wassil bakee* account referred to by respondent was not produced in the lower court.

The plaintiff (respondent) admits the realization of four instalments in full, from 1236 to 1239 F. S., or 550 rupees as well as subsequent payments to the amount of 564-9-1-6, making a total received by her of rupees 1,114-9-1-6 in part of a debt of rupees 1450, only liable to interest on the instalments not paid within the prescribed period. She has not filed any *wassil bakee* account, nor it is clear how she makes out so large a sum as Company's rupees 996 to be *still* due, as she has not specified the *dates* upon which the sums realized between the years 1240 and 1243 F. S. were received, without which the interest cannot be properly calculated. I accordingly remand the case, in order that she may be called upon to supply this omission. The usual order for refund of stamp duty, &c.

THE 28TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 174 of 1846.

Appeal from a decision of Moulvee Humeedooddeen Ahmud, Moonsiff of Kishengunge, dated 16th June 1846.

Mr. Wm. Fitzpatrick, (Plaintiff,) Appellant,

versus

Khedoo Sing and others, (Defendants,) Respondents.

CLAIM, Company's rupees 214.

The petition of plaint set forth that, on the 7th December 1843, Bhoop Narain Sing and others, in all eight shareholders in mouza Pyta Bhada and Puttee Bysa, granted a lease to appellant of a 2 annas, 13 gundahs share in the same at a yearly rent of 361 rupees,

and executed a separate obligation (*ikrarnamah*) at the same time, in which it was stipulated that they and the other maliks were to pay rents for their *kanneh* lands (cultivated by themselves) the same as other ryots after measurement, but that if any of them obstructed the respondent and would not pay, the farmer was to sue them in the court for the same, and failing to get it by this method he was to be allowed a remission of rent to the extent of 214 rupees per annum: that notwithstanding the maliks would not allow their holdings to be measured, nor would they pay any rent, and that in consequence respondent is compelled to sue them all under the terms of the *ikrarnamah*.

Khedoo Sing and the rest who were not parties to the *ikrarnamah* pleaded that they had never paid rent for their *kanneh* lands, nor received any from their co-parceners on that account.

Bhoop Narain Sing and the other subscribing parties to the agreement pleaded that appellant had not acted up to its stipulations, in as much as he neither measured the lands, nor instituted a suit within two years, thereby forfeiting his claim to the remission of the 214 rupees.

The moonsiff, being of opinion that a *double* claim was involved in the petition of plaint, dismissed the suit, with permission to plaintiff (respondent) to institute a fresh suit.

I do not find any such irregularity in this action as could afford grounds for the dismissal of the claim without a trial of the case on its merits: the *ikrarnamah*, it is true, is rather an unusual kind of document, as it stipulates for certain acts to be done by persons not parties to it: however the moonsiff was not bound to enforce its provisions against such parties; all he had to do was to ascertain whether under the circumstances set forth, the plaintiff (appellant) was entitled to the sum claimed by him either from the whole of the defendants or any of them, in consequence of any failure on their part in acting up to the terms of the agreement. I accordingly remand the suit for reinvestigation and decision on its merits. The usual order for refund of stamp duty, &c.

THE 28TH AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 73 of 1846.

Appeal from the decision of Moulvee Moheecooddeen, Moonsiff of Noorgunge, dated 10th June 1846.

Sheebdial Jha, (Defendant,) Appellant,

versus

Lalee Sing, (Plaintiff,) Respondent.

CLAIM, rupees 9-12-6, principal and interest of wages.

This suit was instituted, on the 17th March last, by the respondent, for the recovery of the above sum from appellant, who, re-

spondent stated, had appointed (on the 6th Poos 1251 F.) the latter to be his gomashṭā, for the collection of the rents of certain invalid jagheer lands in mouza Sobhanpoor, on a monthly salary of 3½ rupees, but turned him off on the 8th Cheyt without paying him in full.

The defence is that, after receiving a month's pay in advance, the respondent only worked for a few days, notwithstanding which he demanded his full pay up to the 8th Cheyt, which was paid to him without the *sunnud* (or warrant of office) being returned by respondent.

The moonsiff, after examining witnesses on both sides, decided in respondent's favor, discrediting the plea of payment in full advanced by the other party, as being *prima facie* improbable and unsupported by any receipt or written acknowledgment, and I see no reason for disturbing this decision, which is hereby confirmed, with costs payable by appellant.

THE 31ST AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 6 of 1846.

Appeal from a decision of the Sudder Ameen of Monghyr, dated 28th January 1846.

Ruffee Khan, Soojhan Khan, and Meherban Muhton,
(Defendants,) Appellants,

versus

Sheikh Moongheiree, (pauper, Plaintiff,) Respondent.

CLAIM, Company's rupees 992-7 for possession of 50 beegahs of land, situated in mouzah Govindpoor, pergunnah Furkeea, with mesne profits.

This suit was instituted *in forma pauperis* by the respondent, on the 29th August 1844. The plaint set forth that Bahadoor Naik got a grant of 50 beegahs of land from Government, which he and his brother Munnoo held joint possession of during their lives: that, after their death, Musst. Handah, the widow of Bahadoor Naik, and his nephew Sheik Jhubbun, (plaintiff's father,) succeeded to the property: that, on the demise of Musst. Handah, Sheikh Jhubbun became sole heir, and when he died, he left his widow Musst. Phoola and plaintiff as his representatives: that the defendants' ancestress Musst. Bukhtouree was in no way connected with the deceased Naik, yet the defendants contrived to get a settlement made with them for the land, to the exclusion of plaintiff, after which they sold 25 beegahs for 375 rupees to Meherban Muhton: that, when a mutation of names (consequent on the last named transaction) was applied for, the plaintiff objected, and was referred by the collector to a regular suit.

The defendant pleaded that Sheikh Jhubbun (plaintiff's father) had nothing to do with the property, which, at the death of Bahadoor Naik, devolved upon his *two* widows Musst. Handah and Bukhtouree and a son called Tenee: that Musst. Bukhtouree, at her demise, left a daughter called Roushun, who succeeded to the property, jointly with Tenee, under a deed of gift dated in Aghun 1223 F. S., executed in their favor by Bukhtouree: that the defendants, as the heirs of Musst. Roushun, (Ruffee Khan being her husband, and Soojun Khan her son,) have held undisturbed possession since her death.

The sudder ameen, considering it to have been established by the evidence and by the statements of both parties, that the plaintiff's grandfather Munnoo was the brother, and the defendants' ancestress Musst. Bukhtouree the widow of Bahadoor Naik, proceeded to dispose of the case under his interpretation of the Mahomedan law of inheritance, by which he held that the widows of Bahadoor Naik were entitled to a fourth share, and the nephew, plaintiff's father, to 3-4ths, and that the share of Musst. Handah, on her demise, devolved upon the latter, thus entitling him to 43 beegahs, 15 cottas out of the 50 beegahs acquired by their common ancestor, for which quantity, with mesne profits thereof, he gave a decree in plaintiff's favor.

Against this decision, it is contended by the appellants that the claim was barred by the rule of limitations: that Munnoo having died before his brother, his heirs were excluded from the inheritance, and that, as plaintiff's father never had possession, he (plaintiff) could not legally claim it. That Musst. Handah's share could not go to her husband's heirs under the Mahomedan law.

On the 11th August 1846, the appeal was admitted, and the Mahomedan law officer was called upon to state whether the sudder ameen's interpretation of the law was correct, or not. His reply has this day been read, and is to the effect that the division made by the lower court was erroneous, in as much as, supposing Bahadoor Naik to have left two widows and a nephew, the estate should have been made into eight portions, one of which would have devolved upon each of the widows, and the remaining six upon the nephew, or, supposing him to have left a son also, the latter would have been entitled to 14-16ths, and the widows to 1-16th each; or, in the event of the son's previous death, and the survivors being as above stated, the estate should have been made into forty-eight shares, seventeen of which would have devolved upon the son's mother, twenty-eight upon the nephew, and three upon the childless widows.

As the decision of the lower court is contrary to law, and the sudder ameen has not made due enquiries in regard to the fact (alleged by appellants) of Bahadoor Naik having left a son, which,

if proved, would materially affect the shares to which the contending parties would each be entitled to, I remand the case for re-investigation. The sudder ameen should also ascertain (if such a son be proved to have existed) which of the two widows was his mother, and also whether Musst. Roushun the defendants' ancestress was the daughter of Bahadoor Naik, and, if so, how it happened that she and the son inherited equally after Musst. Bukhtouree's death, as stated by appellants. He should also ascertain clearly *when* the cause of action arose, how long the appellants have had undisturbed possession, and whether the limitation prescribed by Regulation II. 1805 applies to the case, or not. The usual order for refund of stamp duty, &c.

THE 31ST AUGUST 1846.

PRESENT: F. GOULDSBURY, JUDGE.

Case No. 11 of 1845.

*Appeal from a decision of the late Sudder Ameen of Monghyr,
Lala Daturam, dated the 21st of February 1845.*

Musst. Louga, (Defendant,) Appellant,

versus

Musst. Doolar Coerec, widow of Puran Sing, Jemadar, deceased,
(Plaintiff,) Respondent.

THIS suit was instituted, by respondents, on 16th January 1843, to recover possession, with mesne profits, of 31 beegahs, 2 cos., 3 *dhoors*, and 18 *dhoorkees* of jagheer land, said to have been taken hold of by appellant and her moostajir Phecoo Sing, under the following circumstances.

Puran Sing, jemadar, an invalid soldier, obtained from Government a grant of 101 beegahs, 8 cos., and 37 *dhoors* as a *jagheer* under the provisions of Regulation I. 1804, of which 40 beegahs, 2 cos., 3 *dhoors*, and 18 *dhoorkees* are situated in Nizampoor, 25 beegahs in Khooshal Tola, and 25 beegahs in Soojkee Baree Dearah; the rest being the site of his dwelling house; he married plaintiff, and had four sons by her, and of the above mentioned land, he made over 21 beegahs (viz. 6 b. in Dearah Khooshal Tola, 6 in Soojkee Baree, and 9 in Nizampoor) to Mahungoo Sing (the husband of appellant) whom he had brought up, under a deed bearing date the 7th Asaur 1226 F. S. After the jemadar's death, a son of plaintiff's, by name Mudhao, dispossessed Mahungoo Sing of these 21 beegahs, and reference was in consequence had to the regulating officer of the invalid thannahs, who, on the 10th March 1827, reinstated Mahungoo Sing therein, the plaintiff retaining possession of the remainder of the jagheer. In 1241 F. a joint settlement was concluded with plaintiff and Musst. Louga, the widow of Mahungoo Sing,

for the whole, at a juma of 41 rupees, 13 annas, 4 pie, according to which the moostajirs (who held leases from the deceased jemadar) paid the rents of the 21 beegahs to Musst. Louga, and of the rest of the land to plaintiff. In 1244 F. S., one of the moostajirs, Phecoo Sing, colluded with Musst. Louga, and dispossessed plaintiff of the Nizampoor land. She instituted a summary suit before the collector for the rents, which was dismissed on default; she then brought a second (summary) action for the arrears of 1247 F. S., which Phecoo Sing defended, pleading that he had already paid the rents to Musst. Louga, and which was dismissed in consequence, and the plaintiff referred to a regular suit: she then sued Phecoo Sing, in the sudder ameen's court, for the rent from 1244 to 1248 F. S. inclusive, but this claim was likewise dismissed, and she was told to sue for *possession* of the land, which she now does, laying her action at Sicca rupees 617-4, or Company's rupees 647-3-2, viz. 321-2, the value of the land, at the rate of 10 rupees per beegah, and 296-2, being the *wassilat* (or mesne profits) of it.

Phecoo Sing denied the plaintiff's claim to the land, which he stated had been held by him in lease from the year 1208 F. at a juma of 41 rupees, from Puran Sing jemadar, Mahungoo Sing, and Musst. Louga, successively; and that he had paid the rents, to those parties, up to the year 1250 F. S., and holds their receipts for the same. He also stated that Musst. Louga had, in consideration of an advance of 125 rupees, given him a fresh lease for 19 years.

Musst. Louga, in her answer, alleged that plaintiff was not the wife of the jemadar, but merely a slave girl (*kuneez*) while her husband Mahungoo Sing was his adopted son, a *tumleeknamah* (or deed of assignment) of the whole of his property having been executed in his favor by the jemadar, who kept that document by him in consequence of Mahungoo Sing's minority, and executed another deed in his (Mahungoo Sing's) favor for the 21 beegahs. She also pleaded that, as plaintiff had been out of possession, (by her own shewing) for a period of 18 years, her claim was barred by the law of limitations.

The sudder ameen was of opinion that it had been clearly established, by oral and documentary evidence, that Mahungoo Sing, the husband of appellant, was no relation to, nor even of the same cast as the deceased jemadar; but that he had been brought up by him from childhood, and had 21 beegahs assigned to him out of the jemadar's jagheers, in possession of which he was upheld by the regulating officer on the 10th March 1827. He, therefore, considered his right to so much land as indisputable, but that plaintiff, as the wife of the deceased jagheerdar, was fully entitled to the remainder. He discredited the *tumleeknamah* entirely, as it had not been produced before the regulating officer, and had moreover been vitiated by the subsequent deed under which the

husband of Musst. Louga acquired the 21 beegahs held by her. For these reasons, he decreed the plaintiff's claim against Musst. Louga for possession of the land claimed, and for *wasild* at the rate of 1 rupee per beegah, exempting Phecoo Sing from liability.

Nothing new is pleaded in appeal from this decision.

It appears from the roobocary (or proceeding) of Major Spottiswood, the regulating officer of the invalid thannahs, dated the 10th of March 1827, that when Mahungoo Sing laid claim to the 21 beegahs above mentioned *as the adopted son of Puran Sing jemadar*, a full enquiry was held by questioning the resident invalid sepoys and heirs on the subject, the result of which tended to prove that he had been brought up from childhood by the deceased jemadar, but that no regular deed of adoption had been, to their knowledge, executed in his favor, and no such document was produced before the regulating officer. Moreover Mahungoo Sing, at that time, laid claim to only 21 beegahs under a separate deed of gift, and not to the whole estate. The plaintiff's witnesses in this case (all of whom are inhabitants of the invalid thannah in which the lands lie) depose to the respondent having been the *married* wife of Puran Sing, and to her having had several children by him, some of whom are still living. The settlement of the lands has been concluded in the joint names of Doolar Coor and Musst. Louga, and their joint possession is shown by the collector's dakhilas (or receipts) for the years 1839 and 1840. For these reasons, I am clearly of opinion that appellant is entitled to no more than has been awarded to her by the sudder ameen, whose decision is hereby upheld, with costs chargeable to appellant.

ZILLAH EAST BURDWAN.

THE 3D AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 134.

*Appeal from the decision of Mooluvce Ali Hyder, Moonsiff of
Bamnurrah, dated the 23d April 1846.*

Gholam Kulunder and others, (Defendants,) Appellants,
versus

Moonga Beebee, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was instituted for the possession of a four annas share of sixty one beegahs, six kottahs, of khirajee land. The moonsiff, having fully enquired into the merits of the case, and taken an exposition of the Mahomedan law, from the law officer of the court, decreed in favor of the plaintiff. In this finding, I entirely concur. The appellants state their having purchased the land now claimed from Majoo the mother of respondent, but have no deed of sale or any other document to prove the sale. I therefore confirm the moonsiff's decision.

THE 3D AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 135.

*Appeal from the decision of Naziroodeen Mahomed, Moonsiff of
Culna, dated the 18th April 1846.*

Moodhoo Soodhun Rae, (Plaintiff,) Appellant,
versus

Mudun Mohun Banorjee and others, (Defendants,) Respondents.

JUDGMENT.

THIS suit was instituted, before the moonsiff of Culna, to recover the sum of rupees ninety-two, fourteen annas, and ten gundahs, from the defendants, the balance of account. The moonsiff, not considering the plaint proved against the defendants, dismissed the case; from this decision an appeal is now preferred. In my opinion the moonsiff's decision is correct, for the khatta which ought to have supported the plaint, is suspicious; and although the moonsiff summoned the writer of it, and every one likely to throw

light on the case, and who might prove the plaintiff's demand, he either would not, or could not bring forward any one of them. Under these circumstances I dismiss the appeal, and confirm the lower court's judgment.

THE 4TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 145.

Appeal from the decision of Gunga Churn Shome, Moonsiff of Suleemabad, dated the 29th April 1846.

Syud Subkootoolah and others, (Defendants,) Appellants,

versus

Mohesh Chunder Gosaul, (Plaintiff,) Respondent.

JUDGMENT.

THIS plaint was preferred, before the moonsiff of Suleemabad, to receive back the rent which the plaintiff had paid into the collector's treasury, on account of the defendants and to stay the sale of defendant's estate called Kuttal Gatchee. The moonsiff decreed the case in favor of the plaintiff; and from the proceedings held before that officer, it clearly appears that the respondent, who is the farmer of the estate, paid the sum stated, to save the appellants' estate from being sold, and he is consequently entitled to a return of the same from the appellant. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 4TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 146.

Appeal from the decision of Sree Kunth Singh, Moonsiff of Samuntee, dated the 24th April 1846.

Kisto Chunder Roy, (Defendant,) Appellant,

versus

Ram Dhun Hazra (Plaintiff,) Respondent.

JUDGMENT.

THIS plaint was preferred to recover sixteen rupees, thirteen annas, balance of revenue. The moonsiff decided the case in favor of the plaintiff, but did not give the defendant the power of defending his case, as required by Construction No. 375. The defendant, it is true, did not file any answer, till after the plaintiff had filed his proofs; but under the Construction, the moonsiff might have taken the defendant's proof, because he did receive his answer to the plaint, and ought certainly to have admitted him to

plead in his own defence, and to adduce any proof he might possess. I do not consider the case complete, and under these circumstances I return it for further investigation.

THE 4TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 149.

Appeal from the decision of Naziroodeen Mahomed, Moonsiff of Culna, dated the 7th May 1846.

Isan Chunder Banerjee, (Defendant,) Appellant,

versus

Kumul Doss, (Plaintiff,) Respondent.

JUDGMENT.

THIS case was instituted to recover from the defendant fifteen rupees, five annas, the amount of crops made away with by the defendant. The moonsiff decreed in favor of the plaintiff, after taking the evidence of several witnesses on both sides, but never called for any pottahs or jotes from either to shew who had the right to cultivate the land, from which the crops had been taken away. It was necessary I think that he should have satisfied himself on this point, and I therefore return the case to him for further enquiry.

THE 5TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 152.

Appeal from the decision of Pearee Mohun Banorjee, Moonsiff of Kytee, dated the 5th May 1846.

Bissonauth Kuparcea, (Plaintiff,) Appellant,

versus

Isan Chunder Mookerjee and others, (Defendants,) Respondents.

JUDGMENT.

THIS suit was instituted to recover from the defendants Company's rupees nine, three annas, and four gundahs, arrears of revenue, which had been running on from 1246 B. S. to 1251 B. S. The moonsiff passed a decree in favor of the plaintiff, for rupees four, six annas, seven and half gundahs, and for the remainder of the claim, the defendants, respondents, filed the receipts of rent granted by the plaintiff's gomastah. From this decision the plaintiff now appeals, and states the receipts produced are incorrect, and do not agree with the accounts given in by the gomastah to appellant. The deposition of this gomastah clearly proves the pay-

ment by the defendants, at the time the gomastah was employed as the constituted agent on the part of the appellants and plaintiff. I therefore consider the moonsiff's decision quite correct and uphold it, dismissing the appeal.

THE 5TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 153.

Appeal from the decision of Pearee Mohun Banorjee, Moonsiff of Kytee, dated 4th May 1846.

Bissonauth Kuporeea, (Plaintiff,) Appellant,

versus

Nyan Chunder Bhuttarchaj, (Defendant,) Respondent.

JUDGMENT.

THIS case is of precisely a similar nature to No. 152, decided this day. The plaint was for the recovery of revenue from 1246 to 1251 B. S., and amounting in the aggregate to rupees thirty, twelve annas, and sixteen gundahs, with interest. For the reasons stated in the preceding case, the moonsiff decreed in favor of the plaintiff for rupees seven, one anna, and five gundahs, but disallowed the increased jumma of rupees two and eight annas per annum, for 1250 and 1251 B. S., which defendant declared he had given up, and relinquished the land on which it had been assessed. The moonsiff's decision is upheld, with the exception of the increased jumma of two rupees and eight annas per annum, which the respondent's ekrar fully entitles the appellant to receive; and besides this, the respondent has produced no satisfactory proof of any isteevah.

THE 6TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 154.

Appeal from the decision of Pearee Mohun Banorjee, Moonsiff of Kytee, dated 2nd May 1846.

Juggomohun Bose, (Defendant,) Appellant,

versus

Muddoo Soodun Raee and others, (Plaintiffs,) Respondents.

JUDGMENT.

THIS suit was instituted to recover the sum of rupees two hundred and ninety-four from the defendant, being the amount

value of paddy, &c., sold by defendant under Regulation V. of 1842. The moonsiff decreed to the plaintiff rupees one hundred and forty, the value of the produce of 14 beegahs of land, estimated at ten rupees per beegah; and it appears from the moonsiff's proceedings, that the attachment and sale of these crops was unjust on the part of the appellant. The appeal is made to set aside the amount of the moonsiff's decree, which is stated to be exorbitant, the fact of the crop having been unjustly sold is not denied. It appears to me that the moonsiff's decision has fixed the rate of ten rupees per beegah too high, I therefore amend his decree, and allow eight rupees per beegah, which from the enquiries I have made, seems to be more correct. A decree is given for rupees one hundred and twelve, and appellant will pay amount of costs.

THE 6TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 155.

Appeal from the decision of Nazirooddien Mahomed, Moonsiff of Culna, dated the 2d May 1846.

Nemace Ghose and others, (Defendants,) Appellants,

versus

Rampershad Bhuttacharj. (Plaintiff,) Respondent.

JUDGMENT.

IN this case the plaintiff sought to recover from the defendants the sum of twenty-six rupees; on account damages caused by irrigation, and for value of fish. The defendants try to prove, that there has always been the right of irrigation from the tank belonging to the plaintiff, and the plaintiff insists that there is no such right existing, and that he is in consequence entitled to the amount he claims, both from the injury done by cutting the bank of his tank, and the loss of his fish. The moonsiff deputed the ameen to make enquiries, and the ameen reports that there has always existed the right of irrigating from the tank in question; yet the moonsiff has decided the case in opposition to the ameen's report, but without examining, himself, a single witness on either side. In my opinion in this case the moonsiff ought to have gone himself to the spot, which is not distant more than a mile from his cutcherry. The evidence on both sides taken before the ameen is in favor of their respective parties, and without a further investigation it seems impossible to come to a proper judgment of the case. I therefore decrec the appeal, and the moonsiff will go himself and make fur-

ther enquiries, and examine *vivâ voce* such witnesses as the parties may produce before him.

THE 6TH AUGUST 1846.

PRESENT : A. SMELT, JUDGE.

No. 156.

Appeal from the decision of Nazirooddeen Mahomed, Moonsiff of Culna, dated the 13th May 1846.

Manick Chunder Roy and others, (Defendants,) Appellants.

versus

Kartick Churn Koour and others. (Plaintiffs,) Respondents.

JUDGMENT.

THE plaint in this case is to recover from the defendants a bond debt, amounting with interest to rupees two hundred and thirty nine, ten annas. After a very full enquiry into the merits of the case the moonsiff gave a decree in favor of the plaintiffs. There seems to me no doubt of the correctness of the moonsiff's decision in this case, and I accordingly confirm it, dismissing the appeal.

THE 6TH AUGUST 1846.

PRESENT : A. SMELT, JUDGE.

No. 157.

Appeal from the decision of Nazirooddeen Mahomed, Moonsiff of Culna, dated the 13th May 1846.

Ramkoomar Roy, (Plaintiff,) Appellant,

versus

Kartick Churn Koour and others, (Defendants,) Respondents.

JUDGMENT.

THIS is a counter plaint preferred by the son of the appellant, Manick Chunder Roy, in the preceding case, and sets forth a demand against the defendant of forty-nine rupees, balance of a bond debt. The moonsiff dismissed the case, which he considered not to be proved, and to be groundless. In this judgment I entirely concur. The amount in the bond is sixty rupees, and dated the 5th Bysack 1252 B. S., four years nearly after the bond given in the former case; and the evidence adduced in support of it is most suspicious. I therefore dismiss the appeal.

THE 11TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 169.

*Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan,
dated the 21st May 1846.*

Nubai Sirdar, (Defendant,) Appellant,
versus

Kartick Chunder Doobeh, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was instituted to recover the amount of a bond debt, rupees fifty-one, and interest rupees four, thirteen annas, and ten gundahs. The bond is attested by six witnesses, of whom the moonsiff examined only two. The remaining four witnesses, or at least the writer of the bond in question, ought to have been examined; he is said to be still living, and residing in Burdwan, and there is some reason to believe, that the plaintiff would not consent to his appearance, though he was duly summoned, and made over to the charge of the plaintiff. The defendant produces two witnesses to prove an *alibi*. In my judgment, the enquiry is incomplete, the examination of the witnesses to the bond is indispensable; I therefore send back the case to the moonsiff for further enquiry.

THE 14TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 170.

*Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan,
dated the 21st May 1846.*

Kartick Lall Misrec, Claimant, Appellant,
versus

Kartick Chunder Doobeh and others, Respondents.

JUDGMENT.

THIS case is connected with No. 169, decided this day. It refers to the mortgaged property pledged by Nubai bearer, in satisfaction of the bond for rupees fifty-one, given by him to Kartick Chunder. The moonsiff did not enquire into the merits of the claim preferred, but merely referred the appellant to a regular suit, for any right he might have to the property in question. As the proceedings in both cases appear to me incomplete, I return this appeal also to him for further investigation.

THE 13TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 172.

Appeal from the decision of Pearee Mohun Banerjee, Moonsiff of Kytœ, dated 14th May 1846.

Hullothhur Shaeen and others, (Defendants,) Appellants,

versus

Puncharam Shaeen, (Plaintiff,) Respondent.

JUDGMENT.

THIS suit was instituted for the possession of a tank, and the value of a maund of fish, and the amount was laid at rupees fifty-nine. After a full investigation into the merits of the case, and after receiving from the talookdar a full report on the rights of the parties concerned, the moonsiff also deputed an ameen to make a local enquiry, and the plaintiff's plaint appearing just, he decreed in favor of the plaintiff and respondent. There appears to me no reason to disturb the judgment of the moonsiff in this case: it is accordingly confirmed.

THE 13TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 174.

Appeal from the decision of Nazirooddeen Mahomed, Moonsiff of Culna, dated the 19th May 1846.

Kalee Dass Banerjee, (Plaintiff,) Appellant,

versus

Jadub Chunder Chuckerbutty and others, (Defendants,) Respondents.

JUDGMENT.

THIS suit was to recover rupees twenty-nine, nine annas, three gundas, and three cowries, the amount due on a bond debt. The moonsiff dismissed the plaint, deeming the evidence in support of it unworthy of credit, and the bond itself prepared from enmity and fraud. From this decision of the moonsiff I differ, for it is proved by the writer of the bond that the money was borrowed by the defendants, respondents, that the bond was written by himself; the other witnesses to the bond prove the payment of the money to the defendants, respondents. The only reason the moonsiff seems to doubt the evidence, is the difference as to the place where the bond was signed, and the money paid, though all declare that it was in the appellant's house or in the Sheeb Mundul, which adjoins to the plaintiffs' house. I therefore set aside the moonsiff's

decision, and decree the appeal with all costs and interest in favor of the appellants.

THE 13TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 175.

Appeal from the decision of Moolwhee Ali Hydur, Moonsiff of Bamunara, dated 19th May 1846.

Choitun Churn Doss Byragee, (Plaintiff,) Appellant,

versus

Manick Gope, (Defendant,) Respondent.

JUDGMENT.

THIS case is for recovery of a bond debt, which the moonsiff dismissed, not thinking the suit a just one, and the claim not proved. To the bond there are seven subscribing witnesses; two of these depose to the validity of the bond, and the payment of the money, whilst three declare they know nothing whatever of the bond, or the payment of the money; of the remaining two witnesses, the plaintiff and appellant refused to call one, and the other was not examined, as he did not attend. The decision of the moonsiff is I think quite correct, and I consequently uphold it.

THE 24TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 177.

Appeal from the decision of Gunga Churn Shome, Moonsiff of Suleemabad, dated the 25th May 1846.

Sheikh Sha Mahomed, (Defendant,) Appellant,

versus

Sheikh Ruffee, (Plaintiff,) Respondent.

JUDGMENT.

THIS case was instituted, before the moonsiff, to recover the amount of a bond for rupees fourteen (14) with two rupees interest; total sixteen rupees. The bond was granted by Sheikh Sha Mahomed, appellant, and Zumeer to the plaintiff, respondent. In the proceedings held before the moonsiff, the bond was duly proved, and the payment of the fourteen rupees to the defendants fully established. The defendant Sheikh Sha Mahomed denies borrowing the money, and alleges the bond has been got up in malice to him, but could not produce any proof whatever of his assertion. The other defendant never took any notice of the processes issued against him though served according to law. The moonsiff very

properly decreed the case in the plaintiff's favor, in which judgment I fully concur, and accordingly confirm it.

THE 26TH AUGUST 1846.

PRESENT : A. SMELT, JUDGE.

No. 178.

Appeal from the decision of Hamidul Huq, Moonsiff of Mahomed-pore, dated the 20th May 1846.

Joykissen Hajrah and others, (Defendants,) Appellants,
versus

Bhuboo Soondree Dibbeh and others, (Plaintiffs,) Respondents.
JUDGMENT.

THIS suit was instituted, before the moonsiff, to recover rupees three, nine annas, and twelve gundahs, arrears of rent due by the defendants to the plaintiffs, for the years 1250 and 1251 B. S. The only points for investigation are two : 1st, if the defendants were in possession of the land for which the rent is claimed ; and 2d, are the arrears really due or not ?

On the first point it is to be noticed, that the defendants and appellants are Joykissen Hajrah, Lokenath Hajrah, and Soodakishen, and the evidence taken before the moonsiff most fully proves that the three were the dukhetkars ; and on the second point, it is established that the amount arrears is due to the plaintiffs and respondents. Of the three appellants, Joykishen brought forward no objections to the demand before the moonsiff, and Soodakishen has stated that he had paid the rent and produced dakhilahs, which the moonsiff required him over and over again to prove genuine, but Soodakishen was utterly unable to bring forward any proof of their validity ; and the remaining defendant produced no evidence to prove he was not in possession. The moonsiff, after a due investigation into the merits of the case, decreed it in favor of the plaintiffs, respondents ; and this judgment I can see no reason to interfere with, and accordingly confirm it.

THE 26TH AUGUST 1846.

PRESENT : A. SMELT, JUDGE.

No. 179.

Appeal from the decision of Hamidul Huq, Moonsiff of Mahomed-pore, dated 20th May 1846.

Joykishen Hajrah and others, (Defendants,) Appellants,
versus

Unadapershad Banerjee, (Plaintiff,) Respondent.

JUDGMENT.

THIS case being so precisely similar to No. 178, decided this day, that the same decision is passed on this, and the appeal dismissed.

THE 26TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 180.

Appeal from the decision of Hamidul Huq, Moonsiff of Mahomedpore, dated the 20th May 1846.

Joykishen Hajrah and others, (Defendants,) Appellants,
versus

Unadapershad Banerjee, (Plaintiff,) Respondent.

JUDGMENT.

THIS case is also similar to No. 178, decided this day, and for the reasons therein stated, the appeal is dismissed, and the moonsiff's judgment confirmed.

THE 26TH AUGUST 1846.

PRESENT: A. SMELT, JUDGE.

No. 181.

Appeal from the decision of Hamidul Huq, Moonsiff of Mahomedpore, dated 20th May 1846.

Joykishen Hajrah and others, (Defendants,) Appellants,
versus

Unadapershad Banerjee, (Plaintiff,) Respondent.

JUDGMENT.

THIS case is precisely similar to No. 178, this day disposed of, that no further comment is necessary, and the appeal is dismissed.

ZILLAH WEST BURDWAN.

THE 4TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 68 of 1846.

Appeal from the decision of Moulovee Asadoollah, Moonsiff of Radhanuggur, Zillah West Burdwan.

Musummat Beenund Monee and Nihal Surma, (Defendants,)
Appellants,

versus

Khetter Mohun Thakoor, (Plaintiff,) Respondent.

THIS suit is instituted by plaintiff under the following circumstances: he states the defendants borrowed from him at different times 116 maps of rice, and on the 22nd Assin 1251, they executed a bond conditioning to pay the same in Pous of that year, and in payment thereof they pledged their jummaee land, &c., no part of the amount due having been realized, he sues defendants for the amount with interest, laying his action at rupees 297-7 annas.

Defendant, Nihal Surma, denies having borrowed 116 maps of rice from plaintiff, but states in 1251 he executed a bond for 46 maps of rice, but Beenund Monee was not a party thereto, and my land was not pledged in payment of the amount due, &c. &c.

The moonsiff of Radhanuggur passed judgment in favour of the claim. Defendants prefer this appeal. The decision of the lower court is in my opinion incomplete because the defendants' witnesses were not subpoenaed, and plaintiff, respondent's, seeah papers were not sent for. I observe moreover that Bissumbhur Biswas, the writer of the bond, was not examined, although he appeared at the moonsiff's court. The enquiry being therefore incomplete, the case must be remanded. The appeal is consequently decreed, the moonsiff's decision being reversed, and the proceedings are to be returned for further enquiry as above directed, when a decision will be given on the merits of the case and relative to costs. The value of the stamp in appeal is to be refunded to the appellants.

THE 10TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 3 of 1846.

*Appeal from the decision of the Deputy Collector of West Burdwan,
under Regulation II. of 1819.*

Rampershaud Ghosal and others, (Defendants,) Appellants,

versus

Hulodhur Singh, (Plaintiff,) Respondent.

PLAINTIFF, respondent, preferred this suit before the deputy collector of Bancoorah under section 30, Regulation II. of 1819, to resume 45 beegahs $5\frac{1}{2}$ cottahs of land in Gopaul Battee and Kaloo Battee, included in lot Morae, illegally held by the defendants, appellants, as rent free, laying his action at rupees 2995-14 annas.

Rampershaud Ghosaul and others, defendants, in reply state the land to be their hereditary rent free deotur property, and obtained from the former rajah of Bissenpoor: we have sunnuds, &c. in proof of our right to hold the land rent free, &c. &c.

The deputy collector, after enquiry in his record office, decreed the land to be liable to assessment. Defendants appeal. I consider the decision of the deputy collector to be correct, because there are erasures in the original taedad produced by the appellants, defendants; it is not therefore entitled to any credit: and the evidence on the part of the defendants, appellants, does not prove that they held possession of the land as lakhraj previous to the decennial settlement; there is therefore no ground for either modifying or reversing the decision of the deputy collector, which is consequently affirmed, and the appeal dismissed with costs payable by appellants.

THE 10TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 4 of 1846.

*Appeal from the decision of the Deputy Collector of West Burdwan,
under Regulation II. of 1819.*

Sreecaunt Roy Gossain, (Defendant,) Appellant,

versus

Rajah Aman Singh Adhorjee, (Plaintiff,) Respondent.

PLAINTIFF, respondent, preferred this suit for the resumption of land under Regulation II. of 1819, before the deputy collector under the following circumstances. He states turuf Phool Jamb, pergunnah Meliara, to be his zemindary: included therein are $1\frac{1}{2}$

beegahs of land called Soour Dhoba, 2½ beegahs called Khettoo Kunalee, and a tank containing 3 beegahs, called Khettoo Pokur, which is held by the defendant illegally as rent free. I therefore sue for resumption thereof and for rent thereon, laying my claim at rupees 236, annas 8.

Defendant, Sreecaunt Roy, replies that the land under dispute was the rent free property of Khettoo Takoorainee, part of which was purchased by me on the execution of a decree, and I afterwards obtained 19 kottahs thereof at a fixed rent. Originally the land was jungle. Doobraj Cheet, the husband of Khettoo Thakoorainee, obtained a rent free sunnud and umulnama for 8 beegahs of land from the former zemindar of Bissenpoor on the 9th Cartick 1154 : he subsequently got a char chittee from Mr. Dawson, and the grant was confirmed by rajah Joy Singh, plaintiff's father, on the 13th Aughun 1216, and afterwards by plaintiff himself on the 18th Sawun 1230, &c. &c.

The deputy collector decreed the land liable to assessment on the ground that the taedad of appellant had not been registered, and his record office did not afford any proof of appellant's right to hold the land rent free. Defendant appeals from the decision; and on consideration of the proceedings and evidence, I deem the order passed by the deputy collector to be correct, and that it is not liable to be disturbed. The appeal is consequently dismissed, and the decision of the deputy collector affirmed, with costs payable by appellant.

THE 10TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 5 of 1846.

Appeal from the Deputy Collector of West Burdwan, under Regulation II. of 1819.

Ram Singh, (Defendant,) Appellant,

versus

Govindram Puddar, (Plaintiff,) Respondent.

PLAINTIFF, respondent, prefers this suit before the deputy collector under Regulation II. of 1819, to resume 1 beegah 1 kottah of land illegally held by defendant as rent free in mouzah Sceromoneepoor, laying his action at rupees 49-8 annas.

Defendant, Ram Singh, states in reply that his grandfather, Munseram Singh, obtained from raja Cheitun Singh on the 11th Assin 1162, a rent free sunnud for 1 beegah 5 kottahs of land in the mouzah above mentioned, and he afterwards obtained a char chittee signed by Mr. Dawson. Munseram first held possession on the land, afterwards my father, and subsequently myself have been in possession thereof, &c. &c.

The deputy collector decreed the land liable to assessment, because the tacad had not been registered and there was no documentary proof of appellant's right in his office. Ram Singh, defendant, preferred this appeal. After perusal of the record I consider the decision of the deputy collector to be correct and perceive no reasons for disturbing it, and therefore dismiss the appeal, affirming the deputy collector's decision, with costs payable by appellant.

THE 12TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 59 of 1846.

Appeal from the decision of Moulovee Abdool Uzeez, Moonsiff of Oundah, Zillah West Burdwan.

Hurree Singh Mahapatra, (Plaintiff,) Appellant,

versus

Umbeckachurn Banerjee and others, (Defendants,) Respondents.

PLAINTIFF, appellant, states mouzah Kudmee to be included in pergunnah Bissenpoor. Half of the mouzah belonged to defendant, Ghaseram Panda, and half to Fukeer Panda : Ghaseram gave to me on the 15th Cheit 1234 his half share in the mouzah at the fixed rent of rupees 5, 12 annas per annum : in the execution of the decree of Puddolochun Roy No. 70, *versus* Ghaseram and others, his, Ghaseram's half share was attached, and sold ; and defendant, Umbeckachurn Banerjee, purchased it at auction and dispossessed me therefrom on the 11th Cheit 1251. I sue therefore for possession of my mukurruree rights therein, laying my action at rupees 64.

Defendant, Umbeckachurn Banerjee, states in reply that he purchased at auction half of mouzah Kudmee for rupees 170, and obtained possession. Plaintiff, appellant's, mukurruree pottah is false : it is clear from several documents that Ghaseram before mentioned held possession of the half mouzah up to 1249 : this will be proved in the course of the investigation, &c. &c. Fukeer Panda, Aloo Ghose, and others, defendants, reply to the same effect as Umbeckachurn Banerjee.

The moonsiff of Oundah dismissed the suit. Plaintiff appeals from the decision. After a careful consideration of the deuleels and evidence, I consider the moonsiff's decision to be correct, and perceive no reasons for admitting the appeal, because the right of plaintiff, appellant, to hold the land at a fixed rent is not proved, and the evidence of his being in possession as mukurrureedar is not entitled to credit. The decision of the lower court is therefore affirmed.

THE 13TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 338 of 1845.

Appeal from the decision of Baboo Seeteecaunt Singh, Moonsiff of Pothnah, Zillah West Burdwan.

Hurreechurn Bose and others, (Defendants,) Appellants,
versus

Madhublal Pattuck, (Plaintiff,) Respondent.

PLAINTIFF states that he has hereditary rent free property, of which 8 beegahs 7 kottahs, in mouzah Mullickpoor, were given for the support of his aunt, Mussummat Hurree Coomaree. Radhacaunt Khes was at first the jootdar of the land—the defendants subsequently took it on a seven years' lease from 1244 to 1250, at the annual rent of rupees 10, annas 8—a suit was afterwards brought for this land in the moonsiff's court No. 2909, in which the defendants' possession was upheld, but they paid no rent pending the suit, and on the 3rd Maugh 1249 an adjustment of accounts was made by the defendants at the house of Gudadhur Pershaud Tewaree at Burdwan, when a balance of rupees 83, 12 annas, 14 gundahs, was found to be due by them—they paid 20 rupees, but the amount balance not being liquidated, Kishen Dulaul and others entered into an engagement for the land—the sum of rupees 63, 12 annas, 11 gundahs, being still due by the defendants. I sued them in the moonsiff's court for the same, but was nonsuited. I now therefore prefer this claim for the amount due with interest, laying my action at 82 rupees, 8 annas, 14 gundahs.

Defendants, Hurreechurn Bose and others, reply that the land is 8 beegahs, 2 kottahs, and not 8 beegahs, 7 kottahs—it was not given for the maintenance of Mussummat Hurree Coomaree, but was the hereditary rent free property of her husband. Radhacaunt Khes entered into an engagement with him for the same, and cultivated the land up to 1235, when Hurree Coomaree entrusted it to the talookdar, Ramsouder Ghose, from whom we took it in 1236 at the rent of rupees 9, annas 4—in 1244 Mussummat Hurree Coomaree gave us the land on a 7 years' lease at the rent of rupees 10, annas 8. Radhacaunt Khes afterwards instituted a suit in the moonsiff's court, but it was dismissed. Hurree Coomaree afterwards came into our village and we paid her rupees 31, annas 8, rent from 1244 to 1246, and on giving her rupees 31, she gave us the land at the fixed rent of rupees 11, annas 4—we paid her the rent for 1247, and got a receipt. On the death of Hurree Coomaree, when our accounts were adjusted at Burdwan we were found to be indebted to plaintiff in the sum of rupees 22,

annas 8—we paid him 20 rupees, but did not get a receipt from him—the balance rupees 2, annas 8, was never demanded, and this false complaint was instituted, &c. &c.

The moonsiff of Pothnah passed judgment in favour of the claim. Defendants prefer this appeal. After carefully considering the proceedings, I am of opinion that the decision of the lower court is incorrect, and that plaintiff must be nonsuited, because there is no proof that plaintiff, respondent, is the heir of Hurree Coomaree, or whether there are other heirs besides him—enquiry is necessary, moreover, whether the land under dispute was given for the maintenance of Musummat Hurree Coomaree, or whether it was her husband's hereditary rent free property. When these points have been investigated then the objections urged by the defendants that they hold the land at a fixed rent can be enquired into: investigation into the above circumstances cannot properly take place in a suit instituted for arrears of rent—the suit of plaintiff, respondent, is therefore incorrect—if plaintiff wishes he has the power of instituting a fresh suit in a proper manner. It is therefore ordered, that the appeal be decreed and the decision of the lower court be reversed, and that plaintiff, respondent, be nonsuited. The entire costs of suit in both courts being payable by respondent.

THE 13TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 8 of 1846.

Appeal from the decision of Roy Chunder Seekur Chowdry, Principal Sudder Ameen of West Burdwan.

Keenaram Biswas, Radhachurn Mundle, and others, (Defendants,) Appellants,

versus

Ramkulp Roy and Koonchil Manjee, (Plaintiffs,) Respondents.

THE suit of plaintiffs is to this effect—that I, plaintiff, Ramkulp Roy, am putnee talookdar of lot Ramchunderpoor, in which is included mouzah Chanooa; defendant, Radhachurn Mundle, was the former ryot of the mouzah: he had 20 beegahs $1\frac{1}{2}$ kuttahs of land therein at the rent of rupees 98. In 1249, I, Ramkulp, took the putnee, and defendant, Radhachurn, refused to pay me rent, I therefore preferred a summary suit against him under Regulation VII. for rupees 84-7 annas and 6 gundahs, and got a decree. Defendant, Rampershad Biswas, pleading that Radhachurn Mundle was the ryot of his rent free land, and that he had a jumma of 19 rupees, 8 annas, brought a suit against him under Regulation VII. I preferred my claim, but the deputy collector in accordance with the

acknowledgments of the defendant, Radhachurn, passed a decree in favour of Rampershaud, defendant. I, Ramkulp, in the execution of my decree obtained permission to make a fresh settlement for the land, in accordance with which I, plaintiff, Koonchill Manjee, entered into an engagement for the same. The defendants, stating that the quantity of land was 5 beegahs and their rent free property, dispossessed me of 7 beegahs. I prefer this suit therefore to reverse the summary decision under Regulation VII. passed in favour of defendant, Rampershaud Biswas, and for possession of the land with mesne profits, laying my claim at 1146 rupees, 5 annas, 18 gundahs, 2 cowrees, 2 krants.

Defendants, Rampershaud Biswas and others, reply that the land under dispute is 5 beegahs and not 7, it is not (mal) rent paying, but our hereditary rent free property, and included in our 17 beegahs, 5 kottahs of deotur land. We have documentary proof of our right. Defendant, Radhachurn Mundle, is the hereditary cultivator of the land, and in the summary suit he acknowledged it to belong to us. This, with other land, was released by the special commissioner, &c. &c.

The principal sudder ameen passed judgment in plaintiffs' favour. Kenaram Biswas, &c. prefer this appeal. On due consideration of the evidence adduced by both parties, the documents, and ameen's report, I am of opinion that the decision of the lower court is correct, and that there are no grounds for admitting the appeal. The decision of the principal sudder ameen, Roy Chunder Seekur Chowdry, is therefore confirmed. Appellants are to pay their own costs of appeal, and claimant is also liable for his own costs in appeal.

THE 19TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 126 of 1846.

Appeal from the decision of Moulovee Abdool Uzeez, Moonsiff of Oundah, Zillah West Burdwan.

Sagurnarain Singh and others, (Plaintiffs,) Appellants,
versus

Gopaul Sing and others, (Defendants,) Respondents.

PLAINTIFFS' case is this—that on the 15th Poos 1251, I, Radha-caunt Singh, was at Bancoorah, and, I, Sagurnarain, was at home: at derprohur, 11 o'clock at night, the defendants, Gopaul and Gudadhur Singh, with 50 people, labourers, some of them having swords in their hands, came into our threshing floor and threshed out 2 rick of rice, containing about 75 maps and 5 kahoons of straw, and took it away to their own houses. We complained to

the magistrate, but the moulovee dismissed the suit. We therefore prefer this claim for the value of the rice and straw, laying our actions at rupees 149, annas 3.

Defendant, Gopaul Singh, denies the claim, and states that he was not at home on the night of the occurrence. I am entitled to a share in plaintiffs' property, but they refuse to give it me. I preferred my claim thereto *in formâ pauperis*, but it was struck off, and plaintiffs, hearing that I was about to bring a fresh suit, have preferred this false plaint, &c. &c.

The moonsiff of Oundah dismissed the suit. Plaintiffs prefer this appeal. After perusal of the evidence adduced by plaintiffs and that of the witnesses examined before the moonsiff on the spot, and before the ameen who was deputed to make a local enquiry, and on consideration of the proceedings in the magistrate's court sent for pending the appeal, I am of opinion that the decision of the lower court is correct, and that there are no grounds for admitting the appeal: the decision of the moonsiff of Oundah is therefore affirmed.

THE 20TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 78 of 1846.

Appeal from the decision of Baboo Sceteecaunt Singh, Moonsiff of Pothnah, Zillah West Burdwan.

Mohisur Banerjee, (Plaintiff,) Appellant,

versus

Muddosoodun Gossain, (Defendant,) Respondent.

PLAINTIFF states that he is the gomastah of an idol temple. The money collected on account of the temple was under my charge. On the 12th Bysack 1252, defendant borrowed from me a part of this sum rupees 20, and the bond was written in the name of the god of the temple; the money was to be paid in Jheit of that year. No portion thereof having been liquidated, I sue defendant for the amount due with interest, rupees 20, annas 13.

Defendant in his reply denies that plaintiff is gomastah of the temple: the money does not remain under his charge. I did not borrow any money from plaintiff, the bond was exacted from me by force under the following circumstances: plaintiff caused my women to be taken up in a foudaree case, and he would not release them unless I executed the bond, &c. &c.

The moonsiff of Pothnah dismissed the suit. Plaintiff appeals. After perusal of the record and evidence of the parties, I consider the moonsiff's decision to be correct, and see no reason for admitting the appeal. The decision of the lower court is consequently affirmed.

THE 20TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 80 of 1846.

*Appeal from the decision of Moulovee Nazurooddeen Mahomed,
Moonsiff of Indoss, zillah West Burdwan.*

Sheikh Domun, (Plaintiff,) Appellant,

versus

Musummat Taloo Bebee, mother of Danish and others,
(Defendant,) Respondent.

PLAINTIFF states that Sheikh Kangoo, ancestor of the defendants, borrowed from him, on bond dated the 9th Assin 1245, rupees 32, annas 4 : the amount to be paid in Poos of that year. In liquidation of the debt I received, in Maugh of that year, rice to the value of rupees 5, 8 annas. The balance being unpaid, I sue defendants, heirs of Kangoo deceased, for the amount due, being with interest rupees 57. Defendant Musummat Taloo Bebee acknowledges in reply the execution of the bond by her husband, and his having borrowed the money from plaintiff; but after his death I gave to plaintiff, on the 15th Maugh 1245, rice valued at rupees 12, and on the 4th Aughun 1250 I paid him rupees 30; the sum of rupees 42 was altogether paid to the plaintiff, and he returned the bond to me. He is at enmity with me, and has caused a fresh bond to be made, and preferred this false complaint, &c. &c.

The moonsiff of Indoss passed judgment against the claim of plaintiff: from which decision plaintiff prefers this appeal. I am of opinion, after looking at the evidence adduced by both parties, and the documents in the case, that the decision of the lower court is correct, and that there are no sufficient grounds for admitting the appeal. The decision of the moonsiff of Indoss is therefore confirmed.

THE 20TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 79 of 1846.

*Appeal from the decision of Moulovee Abdool Uzeez, Moonsiff of
Oundah, zillah West Burdwan.*

Musummat Khetoomonec, Muddunmohun Singh, and others,
(Defendants,) Appellants,

versus

. Muddoosoodun Banerjee, (Plaintiff,) Respondent.

PLAINTIFF instituted this suit under the following circumstances: he carried into execution a decree against Muddenmohun

Singh, defendant, and attached his land, and an ameen was deputed to the spot and sold it. Musummat Khetoomonee, defendant, purchased it benamee for Muddunmohun Singh for rupees 22, annas 8, gundas 10, and paid the ameen's fees 2 rupees; and Khetoomonee before-mentioned, stating, that she would pay me rupees 3, 12 annas in cash, executed a bond on the 28th Sawon 1251, for the balance due rupees 16, 12 annas, 10 gundahs; and, in payment of the same, she gave me the purchased land in pottah, at the saja-jumma of 12 maps, 4 sullees of rice; and I, plaintiff, consented to put in a receipt in the digree-jaree case; but in consequence of the 3 rupees, 12 annas, not being paid to me, I did not give a receipt, and a fresh sale of the property was ordered, and Rujub Allee, ameen, was deputed to sell it, but Muddunmohun Singh having satisfied me in accordance with the documents above-mentioned, I gave my receipt in the case under the execution of the decree and the sale was stopped, but I never obtained possession of the land, and the amount due has not been paid to me. I therefore sue defendants for the sum due with interest rupees 22, 12 annas, 10 gundas.

Muddunmohun Singh, defendant, did not appear in the moonsiff's court.

Musummat Khetoomonee, defendant, states in reply, that the sale was not a benamee one, but she herself purchased the land and executed the bond in plaintiff's favour, and when the ameen came to sell the property in the second sale she paid plaintiff, respondent, rupees 17 and got an acquittance, and plaintiff gave his receipt in the digree-jaree case: defendant, Muddunmohun Singh, is in possession of the land, &c. &c.

The moonsiff of Oundah passed judgment in favour of the claim, decreeing that the amount due should be recovered in the first instance from the property of Muddunmohun Singh, defendant, and afterwards from that of Musummat Khetoomonee. The defendants prefer this appeal. Since the respondent is present through his vakeel the appeal is admitted, and the case is again brought on for hearing before this court. On consideration of the proceedings, I am of opinion that the investigation of the moonsiff is correct, but the order passed as to the mode in which the amount decreed is to be realized must be modified, because the sum decreed to plaintiff, respondent, is recoverable from the land in the possession of defendant Muddunmohun Singh, and which was pledged for the debt by Musummat Khetoomonee in the bond executed by her; this land must therefore first be sold for the amount decreed, and if the whole sum is not realized thereby, then the property of Musummat Khetoomonee must be sold for the amount still due. The appeal is, therefore, dismissed: the decision of the moonsiff, as above modified, being affirmed: each party is to pay their own costs in appeal.

THE 20TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 83 of 1846.

*Appeal from the decision of Moulovee Nazurooddeen Mahomed,
Moonsiff of Indoss, zillah West Burdwan.*

Mussummat Taloo Bebec, (Defendant,) Appellant,

versus

Sheikh Domun, (Plaintiff,) Respondent.

THE parties in this suit are similar to those in appeal case No. 80, decided this day. Defendant, appellant, prefers this appeal, because she considers that the moonsiff should have forwarded the proceedings to this court with his opinion that the plaintiff, respondent, should be committed for trial on a charge of forgery; but in the first place, there is no appeal in such a case, it being optional with the presiding authority to submit a case of this nature to the superior court or not as he may deem fit; and under Construction No. 572, this court has the power in appeal of committing a party for trial if sufficient grounds exist for so doing; but after looking into the proceedings, I do not perceive any reason for so acting, for although one of the bonds, viz. either that produced by the respondent, plaintiff, or that of the defendant, appellant, must be forged, yet a conviction for forgery could never ensue under the conflicting evidence given by the witnesses to the suit. The appeal is therefore rejected, appellant paying her own costs of appeal.

THE 21ST AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 81 of 1846.

Appeal from the decision of Adeelooddeen Mahomed, former Moonsiff of Kotulpoor, zillah West Burdwan.

Surroop Tantee, (Defendant,) Appellant,

versus

Ramkulp Roy, (Plaintiff,) Respondent.

PLAINTIFF says that in Maugh 1237, defendant borrowed from him on a bond rupees 21, the amount to be paid in Assar 1238. No part of the sum due having been paid, I sue defendant for the same with interest, amounting to rupees 30, annas 13.

The former moonsiff of Kotulpoor passed an *ex parte* decree in favour of the claim. In the execution of the decree, appellant preferred a summary appeal to this court, requesting that leave might

be granted to him, in consequence of irregularities in the original suit, under Construction No. 1048, to appeal therefrom ; and in conformity to the permission given, this appeal has been brought. It appears from the proceedings, that the suit was decided *ex parte*, without proof having been called for of the notice having been properly served on the defendant, appellant : the decision of the lower court is therefore in contravention of Construction No. 755 and section 21, Regulation XXIII. of 1814 : the case must consequently be sent back for re-investigation. The appeal is therefore decreed, the decision of the former moonsiff of Kotulpoor being reversed ; and since it is apparent that plaintiff resides within the division of the moonsiff of Madhubgunge, the proceedings must be sent to his court ; and after issuing notice on the defendant, appellant, and taking his defence, the necessary enquiry will be made into the objections urged by him, and a decision passed on the merits and relative costs. The amount value of the stamp in appeal is to be refunded to appellant.

THE 25TH AUGUST 1846.

PRESENT : EDWARD DEEDES, JUDGE.

Case No. 342 of 1845.

Appeal from the decision of Baboo Thakoor Doss Banerjee, Moonsiff of Indoss, zillah West Burdwan.

Rampershaud Ghosaul and others, (Plaintiffs,) Appellants,
versus

Chunder Mohun Ghosaul and others, (Defendants,) Respondents.

THIS suit was instituted by plaintiffs under the following circumstances : they state they are six brothers living together in mouzah Moorae : we have an hereditary rent free tank called Dhurumsae, and containing 3 beegahs of land. Ramtunnoo Ghosaul and others have a 5 annas, 6 gundahs, 2 cowrees, 2 kts, share therein : Doorgachurn Ghosaul and others have also a 5 annas, 6 gundahs, 2 cowrees, 2 krants, share, and of the remaining 5 annas, 6 gundahs, 2 cowrees, 2 krants, share, half of it, 2 annas, 13 gundahs, 1 cowree, 1 krant, belongs to us, plaintiffs, and the other half, 2 annas, 13 gundahs, 1 cowree, 1 krant, belongs to Chunder Mohun, Ram Narain and Nudeeah Chand Ghosaul, defendants. On the 11th Kartick 1248, we purchased from Doorgachurn Ghosaul and others their share for rupees 49, and on the same date we purchased from Ramtunnoo Ghosaul and others, their shares for the same sum rupees 49, and on the 23rd Assin 1249, we purchased from defendants Chunder Mohun Ghosaul and others their 2 annas, 13 gundahs, 1 cowree, 1 krant, share in the tank for 35 rupees, and on 18th Bysack 1250,

we purchased from the same defendants 2 beegahs, 15 kuttahs of land in mouzah Bhugwan Batee for 95 rupees. We were accordingly in possession of the entire 16 annas of the tank and of the land, when Chunder Mohun Ghosaul, through enmity and stating himself to be an 8 annas sharer in the property, preferred a complaint in the foudary, and the case was investigated under Act IV. of 1840 : the law officer upheld our possession, but on appeal to the session court the order of the moulvee was reversed and possession ordered to be given to defendants Chunder Mohun Ghosaul and others. We therefore sue for possession on the tank, &c., with mesne profits laying our action at rupees 299, annas 3, gundahs 12.

Defendant Chunder Mohun Ghosaul replies that Doorga Churn and Ramtunnnoo Ghosaul have no shares in the tank ; plaintiffs' father and my father were two brothers, who each had an 8 annas share in the tank under dispute, and they were in possession accordingly ; subsequently we were put into possession. We have never sold to plaintiffs any land or our share in the tank—plaintiffs and ourselves have been at enmity for a long period, plaintiffs have induced my brother Ram Narain Ghosaul to side with them ; there is no reason for our selling to plaintiffs our hereditary land or share in the tank ; my brother Nudeah Chund Ghosaul is still under age, &c. &c.

Ram Narain Ghosaul, and Ramtunnnoo Ghosaul, defendants, reply to the same effect as plaintiffs.

Defendant Nudeah Chund Ghosaul, having personally appeared, denies the claim of plaintiffs and the execution of the bond, &c. &c.

The moonsiff of Indoss dismissed the suit. Plaintiffs prefer this appeal. Having taking into consideration the evidence adduced by both parties, the documents and copy of the deed of partition, and the genealogical table produced pending appeal, I see no reason for disturbing the moonsiff's decision which is correct and must be confirmed, because it appears that Nudeah Chund Ghosaul, defendant, who is present, is still under age, and the deed of partition and genealogical table produced by appellants are not entitled to credit ; if the deed of partition were correct, it would have been mentioned either in the case under Act IV. of 1840, in the original suit, or in the grounds of appeal ; this was not the case, and the respondents demur to the genealogical table, and there is no proof that it is genuine ; if plaintiffs purchased the tank and land under deeds of sale they would have been registered. I consider the reply of Ram Narain Ghosaul, in which he acknowledges the sale to plaintiffs, as collusive on his part ; and I see no reason for defendants' disposing of their ancestral hereditary rent free property. For the above reasons deeming the decision of the lower court to be proper, the appeal is dismissed and the decision of the moonsiff of Indoss is affirmed, with costs payable by appellants.

THE 26TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 345 of 1845.

Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Oundah, zillah West Burdwan.

Chota Luchmun Doss, on his decease Radheeka Doss Mohunt,
(Defendant,) Appellant,

versus

Chundechurn Banerjee, (Plaintiff,) Respondent.

PLAINTIFF states that the defendant holds 39 beegahs of land and a tank in mouzah Kuliaree at a low rent: the rent of the land at the pergunnah rate is rupees 127, 5 annas; I issued notice in the defendant's name under Regulation V. of 1812, but he failed to appear. I therefore bring this suit to assess his land at the sum above mentioned, rupees 127, annas 5.

Radheeka Doss Mohunt, defendant, states in reply that he holds altogether in mouzah Kuliaree 30 beegahs, 17 cottahs of rent paying and rent free land: of the rent paying (mal) land, I have sold to Sunker Dumayat and others 3 beegahs, 15 kuttahs, and a mutation of names has been effected: 5 beegahs, 11 kuttahs is the deotur rent free land of other people to whom I pay rent: I hold altogether in the mouzah 15 beegahs, 11 kuttahs of rent paying land at the annual rent of rupees 30, 8 annas, at which rate I have paid rent for many years, and I have 16 beegahs of deotur land in the mouzah, and can produce sunnuds, &c. in proof thereof, &c.

The moonsiff of Oundah decreed 22 beegahs, 12 kuttahs, 15½ gundahs of land liable to be assessed at the rate of rupees 58, 11 annas, 7 gundahs, 1 cowrie from the year 1251. Defendant, appellant, being dissatisfied, prefers this appeal; and subsequently plaintiff, respondent, appeared through his vakeel, and, deeming the decision of the moonsiff incorrect, objected thereto under Construction No. 868, and the whole merits of the case as it affects both parties has been taken into consideration. On a careful review of the proceedings, I am of opinion that the decision of the lower court must be modified. The decree of the moonsiff assesses 17 beegahs, 1 kutta, 6 gundahs, 3 cowries of land, acknowledged by the defendant to be rent paying, at the rate of 33 rupees, 10 annas, 3 gundahs, 1 cowrie. It is further stated in the decree that of the 8 beegahs, 13 kottahs, 6 gundahs of land contained in Dag No. 21, and which is claimed (with the exception of 16 kottahs acknowledged by the defendant to be rent paying, and which is included in the 17 beegahs, 1 kotta, 6 gundahs, 3 cowrees of land above mentioned,) by defendant as the rent free property

of himself and Konaye Damatur, &c., that the plea of Konaye Damatur, &c., to hold 1 beegah, 7 kottahs, 6 gundahs of land rent free is rejected, and this land is assessed at the rate of rupees 6, 2 annas, gundahs 5; the decision of the lower court so far is correct and proper. It is then stated that of the remaining land 6 beegahs, 10 kottahs, contained in Dag No. 21, 4 beegahs, 4 kottahs are liable to be assessed at the rate of 18 rupees, 14 annas, 19 gundahs, the remaining 2 beegahs, 6 kottahs being released. But there are no sufficient grounds for this land being released from assessment: because on the same grounds as the plea of the defendant has been rejected as respects a portion of this land, the same holds good in reference to the entire quantity of land contained in this Dag. At the rate fixed by the assessors the 2 beegahs, 6 kottahs of land is liable to be assessed at 10 rupees, 5 annas, 12 gundahs, therefore to the 22 beegahs, 12 kottahs, 15 gundahs of land assessed by the moonsiff at 58 rupees, 11 annas, 7 gundahs, there will be an increased assessment, on account of the 2 beegahs 6 kottahs, of 10 rupees, 5 annas, 12 gundahs, making a total of 24 beegahs, 18 kottahs, 15 gundahs of land, the assessment of which is 69 rupees, 19 gundahs. The decree of the lower court in reference to the remaining land is confirmed. The appeal is therefore dismissed, and the decision of the moonsiff of Oundah, as above modified, is confirmed, i. e. plaintiff, respondent, will obtain from the defendant, appellant, from 1251 annually 69 rupees, 19 gundahs, being the rent of 24 beegahs, 18 kottahs, 15 gundahs of land, with costs of suit in both courts in proportion to the amount decreed.

THE 27TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 39 of 1844.

Appeal from the decision of Moonshee Zamin Allee, former Moonsiff of Radhanagur, zillah West Burdwan.

Seebanund Sen and others, (Defendants,) Appellants,
versus

Bulloram Roy and others, (Plaintiffs,) Respondents.

THE suit, on the part of the plaintiffs, respondents, is to the following effect: that they have hereditary rent free land in mouzah Purkas: when the rent free land of Seebanund Sen and others, defendants, was resumed under Regulation II. of 1819, and an ameen was deputed to the spot, 3 beegahs, 15 cuttahs of our rent free land were included in the measurement, and the rent of 5 rupees, 13 annas was fixed thereon; and notwithstanding that our father preferred his claim thereto, yet it was rejected, and rent was paid by him for some years to the tihseeldar of Government;

subsequently the land, being small in quantity, was relinquished by Government; and Seebanund Sen and others, defendants, preferred a summary suit for arrears of rent under Regulation VII. against our father Toolseeram Roy and his ryot Rajoo Dey, and notwithstanding that our father died pending the suit and the usual proclamation was not issued for the appearance of the heir, yet the deputy collector decreed the claim. We sue to reverse the summary decision, laying our action at 7 rupees, 5 annas.

Defendants Seebanund Sen and others reply that the land in dispute is their hereditary rent free deoter property, and when it was measured in the suit under Regulation II. the rent was fixed at 5 rupees, 13 annas, and paid for several years by Toolseeram Roy; subsequently, on the land being relinquished by Government, plaintiffs did not pay the rent for 1250: we therefore preferred a summary suit against them, and a decree was given in our favor. We don't know when the father of plaintiffs died, he did not put in any reply in the summary suit. The statement of plaintiffs that the land is their rent free property is false; and the objections urged by them in the resumption suit were considered futile by the deputy collector, &c. &c.

The moonsiff of Radhanagur decreed the claim and reversed the summary decision. Seebanund Sen and others, defendants, prefer this appeal. I consider the decision of the lower court to be incorrect and that it is liable to be reversed, because it appears that in the resumption suit Toolseeram Roy, the father of plaintiffs, respondents, claimed the disputed land, stating therein that it was formerly his rent free property, and had been resumed subsequently by Mr. Oswald, and rent had been fixed thereon, at which rate he paid rent to the talookdar: now in this case plaintiffs state the land to be their own rent free property: what reliance can therefore be placed on such a suit? The reasons given by the moonsiff for passing judgment in favor of the claim are not in accordance with the circumstances of the case. If plaintiffs consider they have any right to the land as lakhrajders, they can prefer their claims thereto according to the regulations, but this suit for arrears of rent cannot be listened to. The appeal is therefore decreed, and the decision of Moonshee Zamin Allee former moonsiff of Radhanagur, is reversed, the summary order of the deputy collector being affirmed and the suit of plaintiffs dismissed. Costs of suit in both courts are payable by plaintiffs, respondents.

THE 27TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

CASE No. 353 of 1845.

*Appeal from the decision of Baboo Juggoobundhoo Banoorjee,
Moonsiff of Bishenpore, zillah West Burdwan.*

Khetermohun Chetoorjee and others, (Plaintiffs,) Appellants,
versus

Rajah Joy Singh, (Defendant,) Respondent.

PLAINTIFFS say they took, on the 26th Sawun 1247 from Rajah Joy Singh, the half of mouza Chooramuneepore in dur-izara from 1247 to 1266, at the annual rent of 114 rupees. We sued Cum-lakanth Mookerjee, Ramgopall, and others, ryots of the mouzah and who held jummas therein of 21 rupees, 14 annas, 19 gundas, 2 courees, 2 krants, for arrears of rent, but the suits were dismissed at first by the deputy collector and afterwards in the civil courts, and leave was given to us to sue the rajah, defendant, for a reduction in the jumma. We therefore prefer this suit against the rajah for the amount recovered from us from 1247 to 1249 on the jummas above mentioned; for costs incurred in the former suits; and that a proportionate reduction may be made in the rent of the farm, laying our suit at 104 rupees, 6 annas, 9 gundas, 10 courees.

Defendant Rajah Joy Singh replies that plaintiffs took from him half of mouzah Chooramuneepore in dur-izara at 119 rupees, 10 annas, 9 gundas, 2 courees rent, and they have paid the rent from 1277 to 1250; therefore I have no interest in the suit brought by them.

The moonsiff of Bishenpore dismissed the claim. Plaintiffs appeal. On revision of the proceedings I am of opinion that the decree of the lower court is improper, and that it must be reversed, because it is clear that the rajah sublet to plaintiffs, appellants, half of mouzah Chooramuneepore at the rent of 119 rupees, 10 annas, 9 gundas, 2 cowrees on the ryotwaree principle (i. e. the holding of each ryot is mentioned in the farming lease,) but when he let the farm to them he was not in possession of the jummas of the ryots above mentioned. Plaintiffs, appellants, therefore never were put into possession thereon: plaintiffs' suits for arrears of rent were dismissed, and permission was granted to them to sue the rajah for a reduction in the rent of the farm; and the rajah having taken from the plaintiffs, dur-izradars, the rent of these ryots from 1247 to 1249, they are entitled to get back the amount from him. Besides it appears from a document dated 18th Bhadoor 1251, given by the rajah to the plaintiffs, that he agreed, when the cases above mentioned were pending, if the plaintiffs did not recover the rents from the ryots, to pay the amount himself to them: this duleel shews that the rajah was aware that the jummas above mentioned were not

in his possession. No objection has been urged on the part of the rajah that he did not receive the amount rent from the plaintiffs. They are therefore entitled thereto from 1247 to 1249, rupees 65, 12 annas, 19 gundas, 10 cogs. If the rajah shall hereafter prove his right in the civil court to these jummas, then he will be entitled to the amount from the plaintiffs, dur-izaradars. Plaintiffs sue for the expences incurred in the former suits, but under the circumstances of the case, I do not consider they have proved their right thereto. The appeal is therefore decreed, the decision of the lower court being reversed; and the plaintiffs, appellants, will obtain from the rajah, defendant, the sum of 65 rupees, 12 annas, 19 gundas, 10 cogs, with interest thereon from date of suit to date of payment, and costs of suits in both courts in proportion to the amount decreed.

THE 27TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 373 of 1845.

Appeal from the decision of Moulvee Asuddoollah, Moonsiff of Radhanuggur, zillah West Burdwan.

Seebanund Sen and others, (Defendants,) Appellants,

versus

Kishen Churn Dutt, (Plaintiff,) Respondent.

THE complaint is to the following effect, that Mudaree Sheikh and Nazir Sheikh held in mouzah Purkas, lot Kishenbottee, a jumma of 1 rupee: they paid the rent to the talookdar: intermediately the rent free land of the defendants, Seebanund Sen and others, was resumed under Regulation II. of 1819, and the jumma above mentioned was included in the measurement, a rent of 2 rupees being fixed on the land, and from 1244 to 1247 rent was paid to the tuhsildar of Government, and in 1248 in consequence of there being a less quantity than 50 beegahs the land was released by Government, and from that year I pay a rent of 1 rupee to the talookdar of the above lot, and notwithstanding that I have no connection with the rent free land of Seebanund Sen and others, defendants, yet on the ground that I held a jumma therein of 2 rupees they sued me for arrears of rent for 1250, and notwithstanding that the talookdar claimed the land, yet the deputy collector decreed the summary suit. I sue therefore to reverse the summary decision and to get back the amount deposited, laying my action at 5 rupees, 9 annas, 6 gundahs.

Seebanund Sen and others, defendants, reply that mouzah Purkas, &c. is their rent free deottur property, it was resumed, but afterwards relinquished by Government. Plaintiff states the land to be rent paying and included in lot Kishenbattee: until the talookdar shall prefer his claim under Regulation II. of 1819,

the suit of plaintiff cannot be listened to. Plaintiff has held a jumma of 2 rupees withiṃ our rent free land for many years and paid us rent, and subsequent to the relinquishment of the land by Government he paid us a small portion of the rent; but no part thereof being paid for 1250, we brought a summary suit against him and obtained a decree in our favour, &c. &c.

Defendant, talookdar, replies to the same effect as plaintiff.

The moonsiff of Radhanuggur reversed the summary decision and decreed the claim. Defendants, Seebanund Sen and others, prefer this appeal. On consideration of the proceedings, I am of opinion that the decree of the lower court is incorrect and must be reversed, because it is evident that the land under dispute was resumed and measured under Regulation II. of 1819, and from 1244 to 1247 plaintiff paid annually to the tuhseeldar of Government 2 rupees rent: afterwards in consequence of there being but a small quantity of land it was relinquished by Government, and although plaintiff and the defendant talookdar state the land to be mal (rent paying), yet if this were really the case they would have preferred their claim thereto when the land was measured and rent demanded from them in the resumption case under Regulation II. This was not done: until therefore they bring their claim to the land under Regulation II. of 1819, and prove it to be rent paying, this suit for arrears of rent cannot be listened to. The summary decision therefore of the deputy collector I consider to be correct, and the decree of the moonsiff of Radhanuggur to be improper. The appeal is consequently decreed, and the decision of the lower court reversed, the summary order of the deputy collector being affirmed, and the suit of plaintiff dismissed. Costs of suit in both courts are payable by plaintiff, respondent.

THE 28TH AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 434 of 1845.

Appeal from the decision of Baboo Tarakissen Holdar, Moonsiff of Aosgaon, zillah West Burdwan.

Khetternath Ghose, (Defendant,) and Ras Beharee Bose,
(Claimant,) Appellants,

versus

Roop Laul Thakoor and others, (Plaintiffs,) Respondents.

PLAINTIFFS state that, I plaintiff Roop Laul, Haradhun Thakoor, and Kissooree Laul Thakoor deceased, were 3 brothers. Our property had been divided amongst us, and we were in possession thereof accordingly. Kissooree Laul died without issue, and I, plaintiff Roop Laul, obtained a 6 annas share of his property, and Ramdayal, the nabaligh son of Haradhun Thakoor, obtained the 10 annas

share, and Kissooree Laul stated in his will that his wife Ram Piria should be supported by what she could get from her disciples. Ram-dayal Thakoor is under the protection of I, plaintiff Pures Monee : there is 1 beegah of our rent free land in mouzah Kurtin Math Panaghur, which is cultivated by defendant Khetternath Ghose at the saja rent of 4 sullees of rice. Khetternath, pleading that he had paid the rent to Ram Piria for 1250, refused to pay us the jumma. We therefore sue defendants Khetternath Ghose and Ram Piria for the value of the same at 2 rupees, 4 annas, 10 gundahs.

Defendant Khetternath Ghose in reply denies being a ryot of plaintiffs. I am a ryot of the talookdar Ras Beharee Bose : the land is rent paying. I took the land from the talookdar at the end of 1245, and pay to him the half produce of the land, &c.

Defendant Ram Piria replies that the land in dispute formed part of her husband's share in the property, and on his death I as his heir came into possession, &c. &c.

Bas Beharee Bose talookdar, claimant, says the land is rent paying. Plaintiffs have no interest therein. Khetternath Ghose gives me a half share of the produce thereof, &c. &c.

The moonsiff of Aosgaon, stating that plaintiffs were entitled to a 10 annas, 13 gundahs, 1 couree, 1 krant share in the land, decreed a proportionate amount of the claim. Khetternath Ghose defendant and Ras Beharee Bose claimant prefer this appeal. On consideration of the documents and evidence in the case, I am of opinion the decree of the moonsiff is incorrect and that it must be reversed, because this was a suit merely for arrears of rent, it was not proper therefore that the moonsiff should state in his decree that the plaintiffs had a certain share in the land : it appears moreover from the proceedings that both parties claim Khetternath Ghose as their ryot, and they both produce kubooleuts said to have been executed by him ; but Khetternath states himself to be a rent paying ryot of the talookdar to whom he gave a kubooleut, and from whom he received a pottah, and gave him a half share in the produce of the land ; he denies being a ryot of the plaintiffs and executing a kubooleut in their favour ; moreover the gomastah of the talookdar has proved the lowazima papers produced by the claimant. Claimant has thereby proved his claim, and although plaintiffs state the land to be rent free, yet they have not produced any proof thereof, and the witnesses adduced by the plaintiffs do not prove that Khetternath is their ryot. If plaintiffs, respondents, have any right to the land as lakhrajdaars, they can prefer their claim thereto under the Regulations. For the above reasons I consider the decision of the lower court to be incorrect and contrary to the circumstances which have appeared pending the investigation. The appeal is therefore decreed and the decision of the moonsiff of Aosgaon reversed, and the suit of plaintiffs is dismissed with costs in both courts payable by them.

THE 31ST AUGUST 1846.

PRESENT: EDWARD DEEDES, JUDGE.

Case No. 351 of 1845.

Appeal from the decision of Moulovee Abdool Uzzeez, Moonsiff of Oundah, zillah West Burdwan.

Chundechurn Banerjee, (Plaintiff,) Appellant,

versus

Muggun Chowdhry, and others, (Defendants,) Respondents.

PLAINTIFF states the defendants hold on a low rent 39 beegahs of land in mouzah Kuliaree. The rent of the land at the purgunnah rates is rupees 149. I issued notice in the defendants' names under Regulation V. of 1812, but they did not appear. I therefore sue to assess their land at the sum above mentioned, 149 rupees.

Defendants reply that they had altogether in mouzah Kuliaree, 16 beegahs, 19 kuttahs of rent paying land, the rent of which was fixed at 49 rupees, 12 annas : 5 beegahs, 14 kuttahs of this land we sold in 1244 to Gourmohun Banerjee, the rent thereof is 1 rupee, 14 annas, and a mutation of names was effected in the zemindar's sherishta : the remaining land, 11 beegahs, 5 kuttahs we are in possession of at the rent of 47 rupees, 14 annas : besides this, I, Muggun Chowdhry, defendant, have a separate jumma in the mouzah of 4 beegahs, 10 kuttahs of land, the rent of which is Sicca rupees 7 : the remaining land belongs to the arazee mehal of mouzah Kuliaree, and is the rent free property of ourselves and other rent free holders, &c. &c.

The moonsiff of Oundah passed judgment against the claim of plaintiff on the grounds, that the defendants only held 15 beegahs, 15 kuttahs of rent paying land for which they paid 58 rupees, 8 annas, 10 gundahs, and there was no reason for increasing their jumma. Plaintiff appealed from the decision. Respondents, Muggun Chowdhry and others, have put in a safeenama agreeing to pay annually to plaintiff from 1251, on account of 22 beegahs, 14 kuttahs, 10½ gundahs of land, including a tank, the rent of Company's rupees 64 ; they further agree to pay 25 rupees to plaintiff on account of costs of suit—each party is to pay the remaining costs incurred by them respectively ; and the appellant puts in a razeenamah in acknowledgment of the same. The appeal is therefore decreed, and the decision of the moonsiff, as modified in accordance with the razeenamah and safeenamah, is affirmed.

ZILLAH CHITTAGONG.

THE 13TH AUGUST 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 713.

Kallidas, (Defendant,) Appellant,

versus

Chutternarain, (Plaintiff,) Respondent.

THIS suit was instituted by plaintiff, on 7th May 1841 or 26th Bysack 1203, to obtain possession of 2 kanees of lakeraje land. He says he bought the land from defendant on the 25th Assin 1178, and afterwards on the 27th of the same month exchanged the land with defendant for the like quantity of land in another place, and that the auction purchaser of turuff Birjlall in 1193 turned him out of this last mentioned land, claiming it as part of the turuff. The suit is therefore brought to recover from the defendant the land purchased from him in the first instance.

Defendant, appellant, denies the whole transaction, and says that neither of the two lands mentioned were ever in his possession, and that he therefore never could have disposed of them as stated by the plaintiff. He states also that turuff Birjlall was sold at auction in 1189 M. S., and that in that same year the plaintiff bought from the auction purchaser the villages in which the lands are situated, from which he says he has been dispossessed; and he pleads that as more than 12 years have elapsed since 1189 the claim is barred by the statute of limitations.

The plaintiff has produced the quabala of the 2 kanees lakeraje land first purchased, the defendant's receipt for the purchase money, and an eosienama or deed of exchange on account of the lands received from defendant in lieu of the land first purchased. In the deed of exchange there is this condition that if ever on any account the land received in exchange should be resumed, then the defendant was bound to restore to the plaintiff the lands first purchased. All these three documents are proved by one witness, who is said to be the only remaining witness to them alive.

The moonsiff, holding these documents to be sufficiently proved, and stating that the cause of action arose not in 1189 as stated by the defendant but in 1193 when the plaintiff was dispossessed, decreed for the plaintiff.

The plaintiff however has failed to adduce any evidence to shew that he was dispossessed in 1193. The moonsiff has assumed the fact from the mere statement of the plaintiff himself. By whom, under what circumstances, and when, the plaintiff was dispossessed,

or whether he ever had possession at all, there is no evidence to shew, although the plaintiff was specially called upon for proof as to all of these points when the case was returned for retrial on a former occasion. The witnesses of the plaintiff, moreover, to a certain extent confirm the objection urged by defendant, that the plaintiff himself became the owner in 1189 of that part of turuff Birjlall in which the land is situated from which he says he has been dispossessed by the auction purchaser, inasmuch as they say they have understood that such was the case. If the plaintiff has only himself resumed the land, or if any one else has dispossessed him, he cannot come into court and make the claim he now does without shewing the circumstances under which the land has been resumed, and the date of his dispossession.

For these reasons the claim must be dismissed, and the moonsiff's decree is therefore reversed and the appeal is decreed, respondent paying the costs.

THE 13TH AUGUST 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 733.

Musst. Sukuena Bebee, Abdosoban, and Afazalla, (Defendants,) Appellants,

versus

Mulka Bebee, (Plaintiff,) Respondent.

THE plaintiff states that for fear of thieves she deposited with defendant, Sukuena Bebee, for safe custody, a box containing certain articles belonging to her and 219 arrees of dhan, and that subsequently, Sukuena's house being burnt down, the defendant, Afazalla, the brother of Sukuena Bebee, saved the box and 169 arrees of the dhan, and conveyed to his house, and the action is brought for the value of the property saved from the flames, which plaintiff states defendants refuse to restore to her.

The plaintiff having fully established her claim by good and sufficient evidence, and the defendants having neglected altogether to defend their cause, the moonsiff decreed against all three defendants, appellants.

Appellants urge that the case has been decided without any evidence having been received on their part, but this was entirely their own fault; for it appears that after entering appearance they afterwards allowed the case to go against them by default, not even putting in answers.

As to the facts set forth by plaintiff they appear to be fully established, but upon what grounds the moonsiff gave a decree against Abdosoban he does not say. The property was not entrusted to him, he was absent when the house was burnt, and no attempt

even is made to shew how in any way he can be held responsible. He is the son of Sukeena Bebee, and this would appear to be the sole reason of the decree against him.

Except as it affects this defendant, I see no reason to interfere with the decree of the moonsiff; but Abdosoban is clearly entitled to be released from the decree. The moonsiff's decree is only upheld, therefore as it regards the other two defendants, appellants, the costs of Abdosoban being paid by plaintiff, both of this court and that of the moonsiff, the other appellants paying all other costs.

THE 13TH AUGUST 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 38 of 1846.

Ram Monee Thakoor, (Plaintiff,) Appellant,

versus

Ramsoonder and others, (Defendants,) Respondents.

THIS was a suit to cancel an attachment of certain property ordered by the moonsiff in a case of execution of decree, and the moonsiff, without receiving the evidence the plaintiff wished to produce, but simply on the evidence already taken in the summary case in which the attachment was ordered, disposed of the suit, dismissing the plaintiff's claim. This mode of proceeding was most irregular and improper. The moonsiff was bound to try the case *de novo* like any other regular suit, receiving from both plaintiff and defendant any evidence they had to produce; and the moonsiff not having done so, the case is remanded to him that he may proceed as here indicated.

THE 20TH AUGUST 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 33.

Radeka Das Mohunt, (Defendant,) Appellant,

versus

Anand Mohun, (Plaintiff,) Respondent.

IN this case the defendant attached the property of plaintiff on a claim for rent of 1205, and relinquished the attached property on plaintiff's executing an agreement to pay 10 rupees, 9 annas juma on account of 9 krants, 18 gundahs, 3 cowries land, and the plaintiff immediately after brought this suit to cancel the agreement as having been forcibly extorted from him.

The defendant claims rent for the land as being part of a bir-moatter tenure zimneh Odeen Das Mohunt, decreed by the special

commissioner to be a valid rent free tenure, of which the defendant is the present mohunt, and states that plaintiff executed the agreement with his own free will.

Plaintiff claims the lands as his own right as having been purchased, he says, from former mohunts, and to which he has succeeded by right of inheritance.

It was proved that the plaintiff had long held possession of the land without paying rent to any one, and that defendant, having attached the plaintiff's property on a claim of rent, withdrew the attachment without any payment by the plaintiff but merely on his executing an agreement to pay rent in future. The moonsiff therefore, concluding that the attachment had been resorted to not for the purpose of realizing a claim of rent, but as a means to extort the agreement from plaintiff, decreed for the plaintiff and ordered the agreement to be cancelled. The moonsiff waved the consideration of the question whether or not the plaintiff had a right to hold the land without paying rent to the mohunt, as being a point which could only be determined if specially brought under trial in a distinct suit.

In appeal it is urged that former mohunts had not the right to alienate any part of the birmooter land, and therefore that the plaintiff's claim to the land as having been purchased is inadmissible. I concur however with the moonsiff in opinion that this point cannot be determined in this suit; and as it is fully shewn that the agreement was extorted by means of the attachment and was not voluntarily executed, the moonsiff's decree is confirmed, and the appeal is dismissed with costs.

THE 25TH AUGUST 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 10.

Salt Agent of Chittagong, (Plaintiff,) Appellant,

versus

Eshan Chunder, Kashee Mohun, and others, sureties of Sadut Alli and others.

THIS was a suit for the value of a deficiency of salt in aurung Bahar Chura, and the principal sudder ameen gave a decree against the several salt amlah defendants, awarding against each according to the proportion for which he was responsible under his agreement; and the question at issue is whether a decree should also be given against certain of the sureties of the two darogahs Ramjai and Sadut Alli, and of Jai Narain, coyah or weigher of salt, the principal sudder ameen having held that they could not be made responsible.

Eshan Chunder and Kashee Mohun defendants had given security for Ramjai; but after an enquiry into the validity of the security, the salt agent had pronounced against it, declaring it to be "na matabur," and calling for fresh security. The principal sudder ameen was of opinion that the security had been rejected by virtue of this order and that the sureties were thence released from responsibility. I quite agree with the principal sudder ameen, for it is clear that after such an order the sureties must have been fully justified in considering their property no longer pledged.

Akamal Alla and Ashan Alla defendants had given security for Sadut Alli darogah at a time when he was a retail sale darogah. He was afterwards transferred from that situation to be darogah of aurung Bahar Churah, where the duty was totally different from that of a retail darogah; and the principal sudder ameen held that the security having been given when Sadut Alli was a retail darogah, the sureties could not be held responsible for a claim against him as darogah of aurung Bahar Churah. But this decision of the principal sudder ameen is in the face of a condition in their security bond by which the sureties engaged that, if Sadut Alli should at any time be transferred to any other office under the salt agent, they were still to be equally answerable for any ~~claim~~ against him in his new situation. Under this condition I consider the salt agent to be clearly entitled to a decree against the sureties.

With regard to the surety of Jainarain the case is this—Jainarain was appointed to his situation on 20th May 1837, and at the time of his appointment an order was passed to the effect that he must give more security as that which he had already furnished was insufficient. As he had failed to give the additional security by the 15th December following, he was again called upon to do so accordingly. On the 27th January some more security was given by Jugo Mohun dusteedar, and measures were taken to enquire into and ascertain as to its validity. At last on the 25th April 1838, whilst this enquiry was still incomplete, Jainarain was summarily dismissed from his situation on the ground that, notwithstanding the length of time that had been allowed him, the security he had given was altogether inadequate.

The principal sudder ameen held that as no order for the approval of the security had passed, therefore it could not be considered as having been accepted. I differ altogether from this view. The surety in executing the security bond became bound by its terms, and what is there now to absolve him from his engagement? If either after an enquiry or without any enquiry the security had for any reason been rejected, the bond would certainly have been cancelled by virtue of the rejection. But as the case stands I hold the surety to be bound by his engagement.

Under the above circumstances the sureties before mentioned of Sadut Alli and Jainarain must be held jointly responsible with Sadut Alli and Jainarain for the amount decreed by the principal sudder ameen against each respectively. But as Ahsan Alla, one of the sureties of Sadut Alli, is dead, the decree as respects that person must be given against the estate of Ahsan Alla. Decreed accordingly in amendment of decree of principal sudder ameen, respondents paying costs of appeal.

THE 25TH AUGUST 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 11.

Salt Agent of Chittagong, (Plaintiff,) Appellant,

versus

Jugmohun and others, (Defendants,) Respondents.

THIS was a suit for the value of a deficiency of salt in auring Bahar Churra; and the principal sudder ameen in giving a decree against the several salt amlah defendants held that Akamut Alla and Ahsan Alla, the sureties of Sadut Alli, darogah, defendant, and Jugmohun dusteedar, surety of Jainarain, cayal, defendant, could not be held responsible under their security bonds, and did not include them in his decree. The question to be decided in appeal is whether a decision should also be given against these sureties or not.

The points here involved are precisely those which have already been disposed of in the similar case regarding the same parties, appeal No. 10. For the reasons therefore fully set forth in that decree the decision of the principal sudder ameen must be amended. The sureties must be held jointly responsible with their principals for the amount decreed against them. But as Ahsan Alla, one of the sureties of Sadut Alla, is dead, the decree must be given against his estate as respects the responsibility which he undertook. Decreed accordingly, respondents paying costs.

THE 25TH AUGUST 1846.

PRESENT: J. B. OGILVY, JUDGE.

No. 3.

Sadoo Ram Mohunt, (Plaintiff,) Appellant,

versus

Musst. Hurcoomaree and others, (Defendants,) Respondents.

THIS is a suit for possession of 2 droons, 17 gundas, 1 cowree of land claimed as part of an endowment for a religious establishment. The following is the substance of the principal sudder ameen's decree. Soobharam Mohunt died leaving plaintiff and defendant, son

and daughter, his heirs, and the lands of this endowment for the support of a sungat or shrine. The lands were resumed and afterwards confirmed rent free to the extent of 37 droons, 5 kanees, 9 gundahs, in possession of plaintiff and defendant; and of these lands 2 droons, 17 gundahs, 1 cowrie according to plaintiff, and according to defendant 2 droons, 2 kanees, are in possession of defendant, the rest being in possession of plaintiff, and the claim is for possession of defendant's land. Plaintiff has never been appointed mohunt either by Government under Regulation XIX of 1810, or by other mohunts. It only appears that Soobharam left these two heirs and the land at his death. Since then defendant has held a small part of the land and the plaintiff has possessed a much larger portion. According to law and custom endowed lands cannot be alienated or divided between heirs, and mohunts are managers of such lands with this condition that, after defraying the expenses of the religious establishment, they maintain themselves and family from the surplus proceeds of the land. As Hurcoomaree defendant is daughter of Soobharam, these 2 droons, 2 kanees in her possession, which is but little, appear to be for her maintenance; and from the time of her possession to the date of institution of this suit, nearly 12 years have elapsed, and during all that time the plaintiff ~~has~~ never objected to her possession, but on the contrary he entered into a joint settlement with defendant to pay revenue for the lands to Government and gave a quobooleat or agreement signed by both. And plaintiff in many papers admits her possession and himself says in his plaint that mohunts, that is, the managers of the endowed lands, defray the expences of the endowment from the profits and support themselves and family from the surplus proceeds. And as the plaintiff agrees to give the defendant an yearly money allowance for her maintenance to the extent of the profits of the land in her possession, and as the defendant is a widow and an old woman and her time is nearly up, the plaintiff can sustain no loss if she should continue to hold the lands in lieu of the money payment, the lands being liable to resumption at her death by the mohunt for the time being. Accordingly, the claim is dismissed.

I certainly cannot subscribe to this very curious decree, which argues against the defendant's right and winds up by a decree in her favor confirming her in possession. I am of opinion however that the claim must be dismissed, though upon very different grounds than those assigned by the principal sudder ameen.

The plaintiff's claim is founded upon a decree of the special commissioner dated 4th May 1844, in which the lands are declared to be a valid rent free tenure on the ground of their having been assigned for the purposes of a religious establishment, and under this decree no doubt the lands cannot be alienated.

But the defendant states that she obtained the lands in dispute from her father for her maintenance, that she has held possession ever since, and that in the end of 1196 M. S., she entered into a settlement with Government for the lands of the endowment jointly with the plaintiff, and she pleads that plaintiff's claim is barred by the law of limitations.

Now this joint settlement is fully proved by the copy duly attested of the engagement filed by the defendant. The presumption then from this settlement is that defendant must have previously had possession of a part of the lands, otherwise it is not to be supposed that plaintiff would have allowed her to engage with him as a co-sharer and to hold possession subsequently to the settlement, as he admits, for a period of nearly 12 years prior to the institution of this suit. This presumption too is confirmed by a petition of plaintiff presented to the deputy collector on 19th September 1842, in which he mentions this joint settlement stating that the lands had been previously in the *istimoraree dukul*, or continuous possession of himself and defendant according to the separate possession of each.

It is true that defendant's witnesses only speak to her possession since the time of the settlement, and two of them state that previously the disputed land was in possession of plaintiff. But it is easily to be understood that these persons may have been won over by the plaintiff, or may be mistaken upon a point of fact of such very old date. At all events I cannot credit their evidence with the petition before me above mentioned of the plaintiff, in which he himself admits continuous possession by the defendant, prior to the settlement. And in the face of this petition, it cannot avail the plaintiff now to say, as he does, that defendant has only had possession since 1197.

I think there are abundant grounds to presume that defendant, as she says, has had possession of the disputed land for her maintenance ever since her father's time. Sobharam Mohunt the father died according to defendant's witnesses, and the fact is not gainsaid on the part of the plaintiff, nearly 50 years ago. Plaintiff says he was mohunt from his father's death up to 1181 M. S., when his incumbency was interrupted for a time by the appointment of a *surberakar* or manager by the officers of Government. But even up to 1181, he must thus have been manager of the endowment during the possession of defendant for much more than 12 years, without disputing her possession. I therefore consider the claim of plaintiff to be barred by the law of limitations. Appeal dismissed accordingly, appellant paying his own and respondent's costs.

ZILLAH CHITTAGONG. .

THE 26TH AUGUST 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 50.

Chundee Churn, Appellant, (Plaintiff,)

versus

Mahummud Shah and Akbar Alli, Respondents, (Defendants.)

THIS suit was instituted by the appellant to recover the sum of thirty-two rupees (and interest), advanced by his father to the respondents in consideration of four canes and one gunda of a shikmee talook, situated in turuff Anwaroolla, being mortgaged to him. The deed was duly drawn out for a period of eight years commencing from the Mugh year 1200. The appellant states that his father died without gaining possession of the land, and that he himself has also failed in that object. The respondents entirely deny the transaction, and each party has adduced evidence in support of his case.

The moonsiff upon several grounds dismissed the claim, but more particularly that the silence of the plaintiff (appellant) for a period of eight years threw the strongest possible suspicion upon his case. In this opinion I concur, and the decision of the lower court is hereby confirmed, and the appeal dismissed with costs.

THE 27TH AUGUST 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 51.

Calee Churn Thakoor, Appellant, (Defendant,)

versus

Mussummat Madhubee, Respondent, (Plaintiff.)

THE plaintiff in this case sued to recover the sum of fifty rupees from the defendant, for two canes and ten gundahs of land, cultivated by him for five years, at the rate of ten rupees per annum.

The defendant denied the debt, and the moonsiff decreed in favour of the plaintiff without sufficiently testing his claim.

The investigation being in my opinion incomplete, the appeal is decreed, the order of the lower court reversed, and the case sent back for retrial, and the value of the stamp paper, on which the appeal is engrossed, to be refunded to the appellant.

THE 27TH AUGUST 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 53.

Haveelash and Mokur Alli, Appellants, (Defendants,)

versus

Kumer Alli, Respondent, (Plaintiff.)

It appears in this case that the respondent, on the 17th Chyete 1186, Mugh year, assigned over to the appellants three canees of land situated in talook Akbur Cassim, for the period of twelve years, for the sum of sixty-one rupees Sicca. In addition to the usual bond there was a separate agreement signed by the appellants to the effect that if, after the expiration of twelve years alluded to in the bond, they did not give up possession of the land to the respondent, they would pay him rent at the rate of four rupees per canee. The period of twelve years having expired, and the appellants not abiding by their engagement, the respondent sued to recover possession together with rents which were due for the land.

The appellants disputed the claim, and declared that the three canees of land were sold to them without any stipulation.

The moonsiff in consequence of the existence of the separate agreement alluded to by the respondent, decreed in his favour. After a careful perusal of the papers and evidence in the case, I see no reason to disturb the decision of the lower court, which is hereby confirmed, and the appeal dismissed with costs.

THE 28TH AUGUST 1846.

PRESENT: W. J. H. MONEY, ADDITIONAL JUDGE.

No. 70.

Hareca, (son of Bularam,) Appellant, (Defendant,)

versus

Mussummet Munosha, Respondent, (Plaintiff.)

In this case the plaintiff sued to recover the sum of three rupees, principal and interest thereon, from the defendant. The defendant simply denied having received the money. The moonsiff however, from the evidence before him, decreed in favor of the plaintiff. As the loan of the money is clearly established, and there is no proof of subsequent payment, the order of the lower court is hereby confirmed, and the appeal dismissed with costs.

· ZILLAH DACCA.

THE 1ST AUGUST 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 280 of 1845.

Appeal from the decision of the Moonsiff of Dacca, Abdoollah.

Sheikh Munnoo Khansamah, (Plaintiff,) Appellant,

versus

Sheikh Eatbarree, (Defendant,) Respondent.

SUIT to recover a bonded debt, amounting with interest to rupees 59-13-1.

The bond was not duly verified; and the moonsiff accordingly dismissed the suit. In appeal there appear no grounds for interference in the moonsiff's decision, which is hereby affirmed.

THE 1ST AUGUST 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 287 of 1845.

Appeal from the decision of the Moonsiff of Dacca, Abdoollah.

Ramlochun Singh, (Plaintiff,) Appellant,

versus

Mussumaut Petumbyrree, (Defendant,) Respondent.

SUIT to recover bonded debt amounting with interest to rupees 21-1-4.

The bond was not verified; moreover, it was proved that appellant was not at Dacca at the time he alleges he there advanced the money. The moonsiff, accordingly, dismissed the suit. There is no ground for interfering in the said decision. The appeal is dismissed, the moonsiff's judgment affirmed.

THE 1ST AUGUST 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 239 of 1845.

Appeal from the decision of the Moonsiff of Naraingunge, Kallee Kinker Sein.

Sheikh Gholam Allee, (one of the Defendants,) Appellant,

versus

Akber and Musst. Phool Jaun, (Plaintiffs,) Respondents.

SUIT to recover advances made for boatmen, with interest, rupees 43-14-10.

Decreed by the moonsiff against the two defendants. Sonaulah defendant has not appealed: he was the principal to whom the advances are alleged to have been made, appellant was his security. On appeal it appears neither notice nor notification was served on the defendant Sonaulah. The proceedings of the moonsiff are therefore incomplete. I reverse the moonsiff's decision, and remand the case to his court for re-trial.

THE 1ST AUGUST 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 276 of 1845.

Appeal from the decision of the Moonsiff of Dacca, Abdoollah.

Musst. Dhun Bebee *alias* Noor Jan Bebee, (one of the Defendants,)

Appellant,

versus

Meer Husen Allee, (Plaintiff,) Respondent.

SUIT instituted at 300 rupees to recover his wife.

Decreed by the moonsiff.

There were three other defendants who did not appeal. The proceedings of the moonsiff in this case were incomplete. Appellant pleaded she had been divorced. Four witnesses were summoned to prove the fact; they were reported to be in attendance, and the moonsiff passed orders that their depositions be taken. Their depositions were not taken, and no reason assigned why they were not, nevertheless the moonsiff passed judgment. The decision is reversed, and the case remanded to the moonsiff's court, for the purpose of rectifying the omission noticed, and for subsequent disposal on its merits.

THE 11TH AUGUST 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 8 of 1845.

Appeal from the decisions of Mahomed Idris, late Principal Sudder Ameen of Furreedpore.

Guddadhur Mullik and others, (Plaintiffs,) Appellants,

versus

Hurkoomar Thakoor and others, (Defendants,) Respondents.

To reverse two summary decisions for rent passed by the revenue authorities under Regulation VII. 1799—the aggregate amount being rupees 614-12-84.

The principal sudder ameen, under date the 17th December 1844, dismissed the suit on the following grounds. The first decision

was for rent for 1248, B. S., and was passed by Molovy Raeez Ooddeen, deputy collector, on the 28th July, 1842, which decision was revised and confirmed by the collector, under date the 13th June 1843. The principal sudder ameen, first remarks, the deputy collector's proceedings were erroneous, and ought not to have been held with reference to a Circular Order 29th April 1842, No. 12, and Section 23, Regulation VII. 1822, and, then, passes judgment, that one year, ten months, and nineteen days having elapsed from date of decision of the deputy collector to date of institution of suit, viz. 17th June 1844, the suit is inadmissible; and the second decision is for rent of 1249, and was passed by Mr. E. F. Latour, deputy collector, on the 17th June 1843, which being a year and a day to the date of the institution of the suit is, in like manner, inadmissible; therefore, the suit was dismissed by the principal sudder ameen.

The principal sudder ameen, however, is in error as regards both the decisions of the revenue authorities. Adverting to his remarks in the first case, it may be observed, 1stly, Section 23, Regulation VII. 1822 is inapplicable to the case; and 2dly, the Circular Order 29th April 1842, quoted by him, is a Circular Order from the Board of Revenue, passed in accordance with a suggestion made by Government, whereby a collector is not prohibited from revising the proceedings of his uncovenanted deputy in summary suits for rent; it specifies the Circular Order of the 28th August 1840 does not render it necessary for collectors "to admit," as a matter of course, all petitions of appeal that may be presented to them against summary decisions by their deputies; but he is enjoined to watch attentively the proceedings of his subordinates, and he is to be guided, in the extent of his revisions, chiefly by the degree of confidence he may repose in their probity and discretion. Further it appears the principal sudder ameen has mistaken the date of the collector's confirmation which was the 13th July and not the 13th June 1843. The suit instituted against this decision, therefore, on the 17th June 1844, was instituted within the period limited by law, viz. one year.

The 2d decision, passed the 17th June 1843, may, also, be legally contested in the said suit, instituted 17th June 1844. By Section 6, Regulation VIII. 1831, the admission of regular suits to contest summary awards of the revenue authorities, is restricted to one year from the date of delivery, or the tender to the party, against whom the award is made of the collector's decision. In explanation thereof, Construction 1028 and clause 10, Section 8, Regulation XXVI. 1814, direct that the interval which may have elapsed between the date, on which the requisite stamp paper may have been furnished by the party to the court, and that on which the copy of the decree may have been tendered or delivered to the

party, shall be excluded from the calculation, which limits the period for the admission of appeal to one year. It is not possible to allow less than one day for delivery of the decision passed 17th June 1843, therefore this lapse cannot bar the regular suit.

The decision of the principal sudder ameen is reversed, the case is remanded to be tried on its merits.

THE 11TH AUGUST 1846.

PRESENT: HENRY SWETENHAM, JUDGE.

No. 62 of 1845.

*Appeal from the decision of the Principal Sudder Ameen of
Furreedpore, the late Mahomed Idris.*

Joynarain Sikdar, Musst. Bijoya, widow of Goorooopershad, and seven others, (certain of the Defendants,) Appellants,

versus

Kishen Govind Nundee, (Plaintiff,) Respondent.

SUIT for possession of a hawolah, qismut Bhatee Kunayepore, &c., in the name of Dyaram Shah, acquired by purchase, valued at rupees 1,769-13-5-1-1.

Petumber Shah and others held this hawolah. They sold rather more than $\frac{1}{4}$ th, viz. 12 annas, 5 gundahs, 1 cowree, and 1 krant, to the appellants, on the 27th Assin 1247 B. S. The purchasers obtained possession.

On the 2d Maugh 1247, or rather more than three months from the date of the said sale, Peetumber Shah and the other former holders made another sale of the whole hawolah to the respondent. Hence this suit for possession.

Documents were presented, and evidence called for by the principal sudder ameen. The qubalah, or deed of sale, of each party was verified: neither of them had been registered. The principal sudder ameen decided on the validity of the respondent's deed of sale, arguing that although appellants' deed of sale had priority of date, and although they were in possession, preference must be given to the title deed of respondents, because the seller acknowledged his deed of sale, and had transferred to respondents, documents, which attested the validity of the conveyance to him, and the absence of which from the hands of the first purchasers served to nullify their claim. The documents alluded to are three quboolcuts, eighteen dakhilas, and a khut from the zumeendar, dated 15th Phagoon 1244 B. S. Accordingly he decreed to respondent.

In appeal, appellants have proved the argument of the principal sudder ameen specious and unsubstantial: cause is shown why the three quboolcuts were not surrendered to the first purchasers; the said quboolcuts were for the sixteen annas, or the whole hawolah.

Appellants purchased only a portion, but in the remaining portion one appellant had a lien, that is to say, Goorooershah, the husband of Musst. Bijya, held a proportion of 3 beegahs, $1\frac{1}{2}$ khota, in the unsold portion, viz. 3 annas, 14 gundas, 2 cowrees, and 2-krants, on account of which he signed the said quboolleuts; hence they were not surrendered to appellants, purchasers of 12 annas, 5 gundahs, 1 kowree, 1 krant.

And as for the 18 dakhilas, 12 of them were receipts for khazana for periods preceding the sale to appellants, there was no reason why the sellers should transfer them to the purchasers, 6 were dated subsequent to the sale, they are receipts for khazana in the aggregate Rupees 49, and are alleged to refer to the 3 as. 14 g. 2 c. 2 k. share, which is very possible, because the jumma of the 16 annas, or whole share, amounts to about rupees Sicca 220, and there was also, as appears from the accompts, a balance due on account of the preceding year.

The zumindaree khut is unimportant: it has not been verified.

Thus the premises said to convey validity to the last deed of sale, are more plausible than substantial. The said deed, too, is open to the objection of an erasure, or defacement, where the words khosh qubalah are entered.

In Maugh 1247, respondent purchased: at that time appellants were in possession, for they (the appellants) hold dakhilas for Kartick, Aughun, Pous, and Maugh 1247, having made their purchase in Assin 1247. In Bhadoon 1249, or 22d August 1842, a summary suit for possession under Act IV. 1840, was decided in the magistrate's court: appellants were found the legal occupants, and, by the orders of the foudaree court, were continued in possession.

The title of appellants, therefore, appears unquestionable. The sellers have not appealed, they have abandoned the cause to be contested between the first and second purchasers. Under these circumstances I decree to appellants, and, amending the decision of the principal sudder ameen, I decree to appellants possession of 12 annas, 5 gundahs, 1 cowree, and 1 krant; and to respondents possession of the remaining, 3 annas 14 gundahs, 2 cowrees and 2 krants. Costs to be paid by the parties in proportion. Respondents, under all the features of the case, are not entitled to award of any mesne profits on account of their share.

ZILLAH DINAGEPORE.

THE 5TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 10 of 1845.

Appeal from the decision of the Principal Sudder Ameen, Moolvee Mahomed Khoorshed.

Pitumber Day, (Plaintiff,) Appellant,

versus

Mohun Mundul, (Defendant,) Respondent.

PLAINTIFF claimed rupees 1500, damages for a false accusation of dacoity. Defendant pleaded that the charge of dacoity was proved against the plaintiff and others before the magistrate; that the search of the plaintiff's house was conducted by the police; and that he, the defendant, was therefore not responsible for it, or any indignity to the females of the family; and further that the plaintiff's salary was 5 rupees per month, and his claim of 1500 rupees damages excessive. The principal sudder ameen decreed 20 rupees damages with half costs, and against his decision both parties appealed. The defendant's appeal was dismissed on the 3d February last, on the grounds given in that decision, (appeal No. 11 of 1845,) showing that the charge of dacoity brought by the defendant against the plaintiff was clearly false and malicious. It now therefore only remains to decide as to the amount of damages the plaintiff is entitled to recover. The plaintiff was a zemindar's "mohurer" of good "caste" and character. The false charge made against him by the defendant, caused the search of his house, which was conducted with circumstances of considerable aggravation, his confinement for a considerable time, and ultimate commitment for trial as a dacoit. The damages awarded by the principal sudder ameen are, in my opinion, altogether inadequate to the injury sustained. I therefore amend his decision, and, with reference to the case noted in the margin, award 500 rupees damages, with full costs.

Munneerood Deen Darogah,
Appellant,

versus

Hurree Pershad Mundul,
Respondent,

Sudder Dewany Reports,
Vol. VI. p. 39.

THE 12TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 2 of 1845.

Appeal from the decision of the Sudder Ameen of Maldah, Mazum Hossein.

Deena Ram Mundul, Pulto Mundul, and Oomor Sing Mundul,
(Defendants,) Appellants,

versus

Chand Misser, (Plaintiff,) Respondent.

PLAINTIFF claims rupees 642-2-2, due on a "kistbundee" for rupees 301, dated the 2d of Chyete 1239 B. S. The defendants Deena Ram and Oomor Sing plead payment of rupees 409 in cash, grain and cattle from 1240 to 1245 B. S., and state that plaintiff agreed to destroy the "kistbundee" in which their property was pledged though not so alluded to in the plaint; that plaintiff claimed this property as pledged to him when it was attached in execution of another decree, and that the said writing has been fraudulently erased by the plaintiff. The sudder ameen decreed the case on the following grounds: two of the defendants' witnesses not being able to speak to the value of grain and cattle delivered; there being only one witness to the delivery of "goor," &c.; the said witnesses being ignorant of the erasure from the "kistbundee;" the plaintiff's explanation of the appearance of erasure, viz. the document having accidentally fallen into water, being satisfactory, as there was no proof of such erasure; the probability that the defendants would have complained had the bond been liquidated, but not returned or a receipt given in lieu of it; plaintiff's petition claiming the property as pledged to him when it was attached in execution of a decree, being no proof that it was so pledged, as there is no mention of it in the body of the "kistbundee," and it is probable that the plaintiff then leagued with the defendants to save their property; a witness to the kistbundee stating that the property was pledged 5 years after the kistbundee was written instead of at the same time, as asserted by the defendants; the defendants and their witnesses stating contrary to fact that all the payments were entered on the "kistbundee."

The point for decision in this case is, whether or not the amount due on the kistbundee was paid in full. The defendants, who plead payment of rupees 409 in money, grain, and cattle from 1240 to 1245, state that after the instalment bond was written their property was pledged for its amount on the same stamp paper, and that the latter writing was fraudulently washed out by the plaintiff. The sudder ameen gives them credit for adding that the payments were also entered on the bond and erased, which they probably intended

to do, as no receipts for the several payments are alluded to, and the plaintiff's witnesses speak to having heard that the payments were entered on the bond. In proof of their property having been pledged, the defendants have filed a copy of the plaintiff's petition in another case, claiming the said property as pledged to him for the amount of this instalment bond; and no explanation of the circumstance is attempted by the plaintiff in his reply. The sudder ameen gets over the difficulty by presuming that the plaintiff on that occasion leagued with the defendants to defraud the other decree-holder; but even if there were probability in the supposition, the plaintiff has no right to benefit by it. The sudder ameen is also satisfied with the plaintiff's explanation of the apparent erasure, viz. that the document accidentally fell into water, which I am not, the marks of erasure being most glaring. The sudder ameen presumes that the defendants would have complained had the bond been liquidated but not returned. I think it much more probable that they should rest satisfied with his promise to destroy the bond, than that he should take no steps for nearly 11 years to recover on a bond given for money due under a decree. The remaining grounds of the sudder ameen's decree I consider frivolous and unsound; and being satisfied that the plaintiff formerly claimed the defendants' property as pledged to him for the amount of this instalment bond, and that a fraudulent erasure has been made, I see no reason to doubt the evidence of the witnesses to the several payments by the defendants. I therefore reverse the sudder ameen's decision, and decree the appeal with costs.

THE 18TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 14 of 1845.

Appeal from the decision of the Principal Sudder Ameen, Moolvee Mahomed Khoorshed.

Juggurnath Tokdar, (Defendant,) Appellant,

versus

Bishenpershad Chowdhree, (Plaintiff,) Respondent.

PLAINTIFF purchased an estate the property of Sheebpershad Jutty and Sheebruttun Jutty, defendants in a suit in which this defendant was plaintiff. The estate was immediately afterwards sold for arrears of revenue, and surplus of rupees 987 was attached at the request of this defendant, while his suit against Sheebpershad and Sheebruttun, was pending.

Plaintiff now claims this surplus with interest. The defendant states that the estate was attached in his suit, and that the

asserted sale of it to the plaintiff is a piece of roguery. The principal sudder ameen decreed the case on the grounds that the sale of the estate to the plaintiff was allowed by the former proprietors Sheebruttun and Sheebpershad, and the defendant's claim against them, on account of which the attachment was made, had been disallowed in another suit. The claim of the appellant against Sheebpershad and Sheebruttun has been dismissed by me in appeal, case No. 15 of 1845, with reference to which I dismiss this appeal with costs.

THE 18TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 15 of 1845.

Appeal from the decision of the Principal Sudder Ameen, Mookhee Muhomed Khoorshed.

Juggernath Tokdar, (Plaintiff,) Appellant,

versus

Sheebpershad Jutty and Sheebruttun Jutty, as principals and as heirs of Nerain Jutty, deceased, and Rajkishore Surma and Lalchund Das, as sureties, (Defendants,) Respondents. "

PLAINTIFF claims rupees 862, due on a bond for rupees 531, dated the 19th of Magh 1245 B. S. The defendants Sheebpershad and Sheebruttun deny the authenticity of the bond, adding that on its date they were minors, and they did not inherit from Nerain Jutty, with whom they were on bad terms. The sureties did not file answers. The principal sudder ameen, on the grounds that Sheebpershad did not sign the bond and that Sheebruttun was at the time a minor, and there being no proof as to what property of Nerain's they had succeeded to, decreed the case against Nerain's estate and the sureties. It is clear that both Sheebpershad and Sheebruttun were minors on the date of the bond, and that their names were subsequently added in Bengalee to that of Nerain, the actual borrower, which is in Nagree. Both the bond and the security bond have been evidently altered from singular to plural, and no pedigree is given to shew that Sheebpershad and Sheebruttun are heirs of Nerain, which accounts for the resort to forgery. The plaintiff's witnesses state that the bonds were written in the singular by mistake, and on its being discovered altered to the plural. There is unfortunately no evidence to warrant their commitment or that of the plaintiff; but being perfectly satisfied that both documents have been fraudulently altered, I amend the principal sudder ameen's decision, and dismiss the plaintiff's claim and appeal with costs.

THE 20TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 16 of 1845.

Appeal from the decision of the Principal Sudder Ameen, Moolwee Mahomed Khoorshed.

Dursun Geer, Zemindar, (Plaintiff,) Appellant,

versus

Lootfoolla Chowdhree, (Defendant,) Respondent.

THIS is a suit, under section 30, Regulation II. of 1819, to resume 19 beegahs, 17 cottahs of land including a tank. The defendant pleads long possession previous to the decennial settlement, and several decisions in his favor, the principal of which was by the register of Maldah in 1822, confirmed by the Sudder Dewanny in 1829. The principal sudder ameen dismissed the case, it having been instituted nearly 17 years after the decision of the register of Maldah above mentioned. I agree with the principal sudder ameen in considering the plaintiff's claim barred by the rule of limitation, and therefore dismiss the appeal with costs.

THE 21ST AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 1 of 1846.

Appeal from the decision of the Principal Sudder Ameen, Moolwee Mahomed Khoorshed.

Syud Mahomed Bux, (Defendant,) Appellant,

versus

Koodyram Pundit, (Plaintiff,) Respondent.

LOT MALINCHA, &c., sudder jumma rupees 3349-7-3 $\frac{1}{4}$, the property of the defendant, was sold for arrears of revenue on the 14th of Poos 1250 B. S., and purchased by the plaintiff for rupees 3680. Plaintiff now claims rupees 506-10-2, surplus collections made by the defendant up to the date of sale according to papers furnished by the plaintiff's ameen, shewing a "hustbood jumma" of rupees 3382-3-9, of which the defendant collected rupees 2519-14-12, though entitled to no more than rupees 2013-8-10, due up to the end of Ughun, the month preceding the sale. The defendant asserts the gross jumma to be rupees 4291-15-13, of which he collected only Rs. 1813-5, leaving a balance due to him up to the date of sale of rupees 1498-12-13, and pleads clause 3, section 23, Regulation VII. of 1799, as to anticipated payments of rent not being admissible. The principal sudder ameen

deputed an ameen to ascertain the amount of collections made by the defendant up to the day of sale, and, on the papers furnished by the said ameen, decreed rupees 494-8-5½ with interest and costs; overruling the collection papers filed by the defendant on the ground that putwarees are in the habit of collecting more than they bring to credit. This supposition regarding putwarees, I presume, refers to the defendant's stating that he collected only rupees 1813-5, while the ameen's papers would make it appear that he collected upwards of rupees 2500; but the same rule applied to their papers for former years would make the plaintiff's claim fall to the ground, as according to them the jumma of the estate is so large that the defendant would be entitled to more than the plaintiff asserts to have been collected by him. The jumma wassil bakkee accounts for 5 years previous to the sale filed by the defendant, are in my opinion much more entitled to credit than the husthood accounts prepared by the plaintiff's ameen, as the amount of collections according to the former leaves the zemindar a moderate profit, while the latter would leave him a heavy loss, and it is not probable that the defendant would have kept for years an estate by which he lost greatly, or that the plaintiff would have given rupees 3680 for such a bargain. The purchaser of an estate in league with his ryotts could have no difficulty in defrauding the former proprietor, if he was to be held responsible to the purchaser for any anticipated payments of rent the ryotts were pleased to assert, or the difference between the actual rent and what they chose to acknowledge. I am satisfied that there has been collusion of this kind in this case, and under any circumstances the ryot, with reference to clause 3, section 23, Regulation VII. of 1799, and not the purchaser of an estate, is the party entitled to sue for an anticipated payment of rent to the former proprietor. I therefore reverse the principal sudder ameen's decision, and decree the appeal with costs.

THE 22ND AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 27 of 1846.

Appeal from the decision of Hurpershad, Officiating Moonsiff of Chintamun.

Sookaroo Paramanik, (Plaintiff,) Appellant,

versus

Hurychurn Das, (Defendant,) Respondent.

PLAINTIFF claims rupees 79, with interest, embezzled by the defendant, who was his gomashtha, on a salary of rupees 2-8 per

month. Defendant states that he was the partner as well as the gomashta of the plaintiff, who seized his accounts, rupees, ornaments, and other property and turned him out, and that he had previously returned all that the plaintiff had advanced with the exception of rupees 2-9-6½. The officiating moonsiff dismissed the case on the grounds that the seizure of the defendant's accounts, &c. by the plaintiff was proved; that the evidence of the plaintiff's witnesses was contradictory, and the "khata bye" produced by him irregular, and evidently prepared for the occasion.

The suit itself is irregular and ought to have been nonsuited. The stamp paper on which the kobooleut filed by the plaintiff is written, was not purchased by the defendant, and there are no less than seven witnesses to it, a most unusual number for such a document, and two of the names were evidently not written at the same time with the others. It would therefore appear to have been prepared for the occasion like the "khata bye," as the defendant's witnesses state that there was no written engagement. The witnesses also state that the shop was kept by the defendant and funds supplied by the plaintiff, who, being dissatisfied with the purchase of some salt, made the defendant dispose of it to a neighbour, and on receiving the price took the key of the strong-box and turned the defendant out of the shop. Under such circumstances I see no reason for interference with the moonsiff's decision, and therefore dismiss the appeal with costs.

THE 22ND AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 25 of 1846.

Appeal from the decision of Fuzloolla, Moonsiff of Beerungge.

Chitlogon Chowdrain, (Plaintiff,) Appellant,

versus

Mujai, Boly Bewa, and Hedai, (Defendants,) Respondents.

PLAINTIFF claims rupees 30-9, due on an ikrar for rupees 24-6-9½, dated the 13th Assin 1248 B. S., given for the balance due on a kistbundee for rupees 21, dated the 27th May 1244 B. S., by Mujai and his brother Rujai, deceased. Two payments are credited on the ikrar of one rupee each on the 19th Falgoon 1249, and the 5th Bysack 1250 B. S.

Defendants deny the authenticity of the "ikrar," and state that Rujai died on the 2nd Poos 1246: that in May 1250 Mujai, when absconding from the plaintiff's estate, was seized by plaintiff's brother and complained against him at the thana, on which the plaintiff's gomashta made a false charge of theft against Mujai at another thana, and that this false claim is now in consequence.

In reply plaintiff states that Rujai died in Magh or Falgoon 1248: that her gomashta charged Mujai with theft as he, her adyar, took away the crop at night, and Mujai's charge of assault was not proved. The moonsiff dismissed the case on the following grounds. Three witnesses for the defendant prove the death of Rujai in Poos 1246: two witnesses for the plaintiff state that Rujai died in Poos 1248, and one that he was told he died in Agun 1248, while plaintiff sued him as alive in 1251, and subsequently stated in a petition that he had died since the institution of the suit. These are certainly plausible grounds for deciding that Rujai died in 1246, i. e. some two years before the date of the ikrar, but the plaintiff may not have been aware that Rujai was dead when she instituted the suit, and in the petition, the object of which was to have the names of his heirs substituted, the vakeel appears very unnecessarily to have inserted that since the institution of the suit Rujai had died, instead of simply stating that he was dead. There then remain simply three witnesses for the defendants and three for the plaintiff, touching the year in which Rujai died. The ikrar is for the balance of an instalment bond, and both are produced by the plaintiff. The defendants deny the former, but do not distinctly deny the latter. I am of opinion that evidence should be taken in respect to it, as on it the case hinges, seeing that, being in possession of it, the only object of the plaintiff, in taking an ikrar for the balance due, must have been to get a little extra interest.

I therefore remand the case for revision.

THE 24TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 11 of 1846.

Appeal from the decision of Hurpershad, Acting Moonsiff of Chintamun.

Juggernath Napit, (Defendant,) Appellant,

versus

Mahomed Tincowree, (Plaintiff,) Respondent.

PLAINTIFF claims rupees 298-15-5, due on a bond for rupees 299, dated the 7th Falgoon 1247 B. S. Two defendants Radamohun and Badyram (who have appealed in No. 35) state that they received rupees 61 and rupees 40, and repaid rupees 64 and rupees 35. The defendant Juggernath denies the bond, pleads enmity on the part of the plaintiff in consequence of a foudjaree case, and states that Radamohun is a friend and Badyram a mohurer of the plaintiff. The officiating moonsiff decreed the case against all the defendants on the evidence for the plaintiff. I con-

sider the bond a gross forgery on the following grounds. The defendants are a "napit," a "tantee," and a "kyburt," a most improbable union. The plaintiff and his witnesses, with one exception, do not attempt to account for three such men borrowing money jointly. The exception states that they frequently had similar dealings with the plaintiff's father. On the bond three payments are credited, viz. rupees 51 in 1248 by Radamohun, rupees 25 in 1248 by Juggernath, and rupees 35 in 1250 by Badyram, all apparently written by the same person and at the same time. Badyram states that he entered his payment with his own hand, which is possible enough, as he was then the plaintiff's mohurer, but Juggernath can also write, and, if he had borrowed and paid, it is to be presumed that he would have taken the same precaution. Plaintiff states that Badyram became his mohurer in 1248, being deep in his books for advances made before the date of the bond, a most lame way of getting over Juggernath's charge that the bond is a forgery and his mohurer a fictitious defendant. Radamohun accuses plaintiff of not crediting 13 rupees, or rather erasing the payment, though the 51 rupees payment is on the bond and no trace of expunging. This is a clumsy attempt to make it appear that he is not a fictitious defendant. Juggernath attributes the plaintiff's enmity to a case in which his sirdar was fined for forcibly taking a bond, Juggernath being a witness, &c. The plaintiff's reply is designedly obscure, but the copy of a foudaree roobakaree filed, satisfies me as to the existence of enmity. The plaintiff's witnesses are all his debtors, servants, or persons having dealings with him; and from the style of their evidence, added to the above, I am satisfied that the bond in question is a forgery, and Radamohun and Badyram fictitious brother-defendants of the appellant. I therefore reverse the decision of the moonsiff, and decree the appeal with costs.

THE 25TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 35 of 1846.

Appeal from the decision of the Acting Moonsiff of Chintamun, Hurpershad.

Radamohun Das and Badyram Das, (Defendants,) Appellants,
versus

Mahomed Tincowree, (Plaintiff,) Respondent.

PLAINTIFF claims rupees 298-15-5 due on a bond for rupees 299, dated the 7th Falgoon 1247 B. S., signed by the appellants and Juggernath napit, appellant in case No. 11 of 1846. The moonsiff decreed the case against all the defendants. The appellants urge that they are only liable for the balance due on the portions of the loan received by them, that plaintiff has not given

credit for r. 13 paid by Radamohun or Badyram's salary, amount not stated, and that they had not an opportunity in the moonsiff's court of proving their assertions. The appellants were called upon for proof by the moonsiff, and in case No. 11 of 1846 I have given my reasons for considering the bond a forgery and the appellants fictitious brother-defendants of Juggernath napit. On the same grounds I reverse the moonsiff's decision in respect to the appellants, and decree the appeal, but without costs.

THE 25TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No 30 of 1846.

Appeal from the decision of Radhanath Sircar, Moonsiff of Gourgoreeba.

Suroop Bind, (Plaintiff,) Appellant,
versus

Nuthoo Bind, (Defendant,) Respondent.

PLAINTIFF claims rupees 6-8-10, due on account of rupees 5 lent by his wife to the defendant on the 15th Sawon 1249 B. S. Defendant states that he borrowed the 5 rupees in Falgoun 1249, and paid them back in Bysack 1250. Plaintiff in reply denied both assertions, adding that the Sawon 1249 advance was the only one made to the defendant, and subsequently stated that besides the sum now claimed the defendant borrowed 5 rupees in 1248, which he repaid in Bysack 1249.

The moonsiff dismissed the case on the evidence of witnesses to payment by the defendant in 1250, overruling the plaintiff's plea that the said payment was made in 1249 for money lent in 1248, as he had distinctly stated in the first instance that he had never lent money to the defendant, except on the said 15th of Sawon 1249 B. S. I see no reason to alter the moonsiff's decision, which I hereby confirm under clause 3, section 16, Regulation V. of 1831.

THE 26TH AUGUST 1846.

PRESENT: JAMES GRANT, JUDGE.

No. 31 of 1846.

Appeal from the decision of Fuzloolla, Moonsiff of Beerungge.

Moheissery, widow of Sher Mahomed, deceased, and others,
(Plaintiffs,) Appellants,

versus

Panissery, widow of Helpa, deceased, and others, (Defendants,) Respondents.

THIS is a claim for rupees 125-13-17-3, due on a bond for rupees 59, dated the 11th Sawon 1236 B. S., signed by Ruhmut

deceased. No answer was filed on the part of Debaree, widow, and Onoo, son of Ruhmut. Dil Mahomed, nephew of Ruhmut, acknowledged the debt, and the other defendant Helpa, brother of Ruhmut, denied being liable, as they had been separated for many years. In 1841 the officiating moonsiff of Beergunge decreed the case in favor of the plaintiffs. In appeal the principal sudder ameen exempted the heirs of Helpa, (who died after the case was instituted,) and in special appeal the case was remanded for revision by the moonsiff, the bond being on a 4 anna, instead of an 8 anna stamp. Moonsiff Fuzloollah has decreed the case against the widow, son, and nephew of Ruhmut, exempting the heirs of Helpa, brother of Ruhmut, on the ground that their separation took place long before the date of the bond, and overruling an instalment bond for the balance of half the original decree purporting to be by the heirs of Helpa (who deny its authenticity) as it was not filed in court. This instalment bond is dated some six months before the appeal was decided, and is said to have been sent to the plaintiff's wakeel, who states that it was given to him immediately after the decision. It is for half the amount of the decree, though one-third was all that under any circumstances could fall to the share of the heirs of Helpa, who all along denied their liability for the debts of Ruhmut, and now deny the authenticity of this document. It further appears that the plaintiff filed a receipt, bearing the same date as this instalment bond, through the peada who had a summons against the defendants, stating that he had received through the said peada the amount of the decree in full. This suit was instituted some 11 years after the date of the bond, and it is to be presumed that if Helpa, who did not sign the bond, had not previously separated from Ruhmut, the borrower, there would not have been so much delay; and I therefore see no reason to doubt the evidence to their previous separation, or to give any credit to the instalment bond above mentioned. I therefore confirm the moonsiff's decision under clause 3, section 16, Regulation V. of 1831.

ZILLAH HOOGHLY.

THE 19TH AUGUST 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 38 of 1845.

Principal Sudder Ameen's Appeal.

Ram Mohun Banoorjee, heir of Lall Mohun Banoorjee, deceased,
(Defendant,) Appellant,

versus

Radhanauth Pandeh, (Plaintiff,) and Kumla Kant Mittre, Bunderam Mittre, Kasheenaath Mittre, Doorga Persaud Mittre, Diggamber Mittre, Oditchurn Kurr and Hurreenarayn Chowdry, (Defendants,) Respondents.

THIS claim is for the reversal of an erroneous sale of a putnee talook, and for possession of it with mesne profits, estimated at 1600 rupees.

From the perusal of the principal sudder ameen's fysalla, the grounds set forth in the petition of appeal, and the papers of the original nuthee, it appears the respondent Radhanauth Pandeh in his plaint states that, on the 7th Bhadhoon 1250, he purchased from Kumla Kanth Mittre and others, heirs of Gopeechurn Mittre, former putneedar, for 601 rupees, a five annas share of putnee talook mouzah Moorgahberrea, adjoining lot Koolindah; the annual rent of which is r. 189-10-13-1-1k. Although he had sent the rent due up to the month of Assin of that year to the zumeendar Lallmohun Banoorjee, who was the purchaser of the 10 annas share of mouzah Moorgaberrea, he refused to receive the same, and notwithstanding the property is situated within the civil jurisdiction of Hooghly, he had fraudulently and illegally filed a suit, for 197 rupees, as arrears of rent due up to Assin, on the 10 annas share, under Regulation VIII. of 1819, in the collectorate of Burdwan, and had the property sold, which was purchased by Hurrynarayn Chowdry, for 1570 rupees, and he dispossessed Radhanauth Pondah.

Lalmohun Banoorjee (brother of the appellant) in his answer states, that the statements of the plaintiff Radhanauth Pondah, regarding his having purchased a five annas share of mouza Moor-

gahberrea is false: that the name of Radhanauth Pondah is not registered in his (Lallmohun Banoorjee's) sherishta: that Radhanauth Pondah had not sent the rent due to him: that he had instituted a suit under Regulation VIII. of 1819, for the realization of rent due up to Assin 1250 on the ten annas share of the said putnee talook in the Burdwan collectorate, according to former practice, and in consequence of the non-realization of rent the property in question was sold, &c.

The principal sudder ameen, Roy Radhagobind Shome Baboo, decreed the case on the 5th of September 1845, on the grounds that the kobala filed by the plaintiff, respondent, and from the evidence of his witnesses, it had been proved that the plaintiff purchased and held possession of 5 annas share of mouzah Moorgaberrea; and that he had sent the rent due by him, viz. 100 rupees for the six months of 1250 to Lallmohun Banoorjee, who refused to receive it; that by the precedent (final fysallah of the Sudder Dewanny Adawlut No. 109) filed by the plaintiff, respondent, the sale cannot be confirmed, and therefore the sale be reversed, and ordered that the plaintiff be put in possession, as purchaser of the 5 annas share in the said mouzah Moorgaberrea, and that in the execution of the decree, mesne profits according to the ameen's report, are to be realized from the defendant in possession, and the costs to be paid by appellant.

The appellant has preferred this appeal, being dissatisfied with the orders passed by the principal sudder ameen, on the same grounds as set forth in his reply in the original suit, except on the following point, that the kobala filed by the plaintiff is a fabricated one, and his witnesses are persons employed to give false evidence, that the putneedar for the other 5 annas share in mouzah Moorgaberrea, has raised no objection to the reversal of the sale, but he rather acknowledges it, and received the surplus of sale proceeds from the Burdwan collectorate, and that the principal sudder ameen has unjustly reversed the sale of the whole ten annas share.

From the kobala filed by the plaintiff, respondent, and the evidence of his witnesses, particularly the fysallah of the Sudder Dewanny Adawlut, filed as a precedent in his case, and the grounds set forth in the principal sudder ameen's fysallah, I see no reason to admit the appeal, or reverse the principal sudder ameen's decision, therefore dismiss the appeal and confirm the decision of the principal sudder ameen dated 5th September 1845: the costs to be paid by the parties respectively.

THE 19TH AUGUST 1846.

PRESENT: F. W. RUSSELL, JUDGE.

No. 36.

Principal Sudder Ameen's Appeal of 1845.

Teelock Chunder Sing, (Defendant,) Appellant,

versus

Joychunder Paul Chowdry, (Plaintiff,) Respondent.

CLAIM, for 1,376-2-5-1-1, balance of rent including interest.

From the perusal of the additional principal sudder ameen's fysallah, dated the 29th August 1845, and the grounds set forth in the petition of appeal, and the papers of the original nuthee, it appears that the respondent instituted a suit for the balance of the rent of the putnee talook Roktha Shontospore, adjoining to lot Bahadurpore, and it was incumbent on the additional principal sudder ameen to call for evidence in this case, as to who was the individual who was in possession of the property in dispute, and then to decide the case: his not having done so, leaves the decision of the additional principal sudder ameen in my opinion imperfect, and therefore it is ordered, that the appeal be decreed and the additional principal sudder ameen's decision be reversed, that the original nuthee be sent to the present additional principal sudder ameen to restore the case to its former number on his file, and re-try the suit. The costs of both courts to be paid by each party respectively, and the value of the stamp of the petition of appeal be refunded.

ZILLAH JESSORE.

THE 5TH AUGUST 1846.
PRESENT : E. BENTALL, JUDGE.

No. 37 of 1846.

Bunmalee Butacharj

versus

Ashuk Mahomed Duffadar.

THIS suit was instituted, on the 17th August 1842, in the Court of the moonsiff of Tala, to reverse a summary decision under Regulation VII. of 1799, given *ex parte* against Ashuk Mahomed to the extent of rupees 108-4-13c., on the 15th April 1833. The suit was not for damages. The plaint was written on a stamp of rupees 8, which would not carry a plaint for damages according to the full extent of the law in such a case. The moonsiff not only tried the suit on its merits, but gave a decree for more than rupees 300, besides costs, viz. for rupees 324-12-9-3c., besides costs. It is said that the summary suit having been tried *ex parte*, Ashuk Mahomed was not aware of it till long after its disposal—that might be a reason for the revenue authorities refusing to execute their decree, but it is not a reason for a civil court admitting a suit to contest the merits of a summary award under Regulation VII. of 1799, after the period of one year from the tender of the written award, counted according to the rule laid down in Regulation XXVI. of 1814, Section 8, Clause 10. But it appears that Ashuk Mahomed was aware of the summary award more than a year before the institution of this suit; for he had actually deposited the amount of the summary decree in the collector's court in September 1836. Under these circumstances I reverse the decision of the moonsiff, and dismiss the plaintiff's suit with all costs.

THE 6TH AUGUST 1846.
PRESENT : E. BENTALL, JUDGE.

No. 38 of 1846.

Bunmalee Butacharj

versus

Ashuk Mahomed Duffadar.

BISHONATH BUTACHARJ, on the 9th June 1842, distrained property of Ashruf Mahomed for rent amounting to rupees 95-12

with interest, and on the 12th July 1842, Ashuk Mahomed brought an action of replevin in the moonsiff's court against Omesh Chunder Pall Choudree, the zemindar, the receiver of the Supreme Court, Bishonath Butacharj, the ijaradar under the receiver, and Gour Chunder Bose the gomashta of Bishonath. But Bishonath, having died while the suit was pending, was represented by his son and heir, the appellant. The moonsiff tried the suit on its merits, and gave the plaintiff a decree against Bunmalee alone according to the plaint, which was written on a stamp of rupees 2, and he added damages, so that this appeal is for rupees 287-11, and is written on a stamp of rupees 16.

In consequence of its having been objected before me that the trial of the moonsiff was not complete as it related to the receiver of the Supreme Court, I must observe that a notice served under Act XXIII. of 1840, relating to a suit before a moonsiff, need not be proved to have been served in the manner prescribed in Regulation XXIII. 1814, Section 21, Clause 2, for proof of similar notices. But Gour Chunder Bose did not appear before the moonsiff, and the enquiry prescribed as above stated was not made respecting the notice served on him ; it does not however appear to have been necessary that the suit should have been brought against any other person than Bishonath Butacharj, and no award has been given against Gour Chunder Bose, and Ashuk Mahomed has not appealed against his having been released from responsibility, so that the prescribed enquiry, as it related to him also, was not necessary.

The first dispute between the parties is respecting the amount of the annual rent, which Ashuk Mahomed states to be Company's rupees 149-12-9-1, according to a decree of court dated 2d June 1821 ; but Bunmalee has produced a kabooleat dated 26th January 1829, according to which a second juma was added to the former, and the consolidated rent of the two amounts to rupees 188-7-4-3.

The only reason for supposing this disputed kabooleat genuine, is that a summary suit under Regulation VII. of 1799 was decided according to it on the 15th April 1833. But since it was an *ex parte* award, and no attempt was made to execute it until more than 12 months had passed, in my opinion it is so far from corroborating the kabooleat that it renders it more suspected than ever ; and as Ashuk Mahomed has produced receipts for payment at the rate of Company's rupees 149-12-9-1, I am of opinion that the moonsiff was correct in taking that amount of rent as the ground of his decision.

Ashuk Mahomed states that he has paid his whole rent, and he produces three receipts to prove it. Two of them, for rupees 50 each, the moonsiff considers proved good. Bunmalee also ac-

knowledges that Company's rupees 99 had been paid and receipts given for the amount, and it is not denied by him that two of the abovesaid three are the very receipts given. Now all three receipts purport to have been written by the same person, viz. Gour Chunder Bose ; but it is the opinion of a jury that one of the receipts for rupees 50 was written by a different hand from that of the other two, and I cannot allow it to be genuine. I therefore declare that an attachment for an arrear of rent to the extent of rupees 50, would have been justified by law, and I release Ashuk Mahomed from liability beyond that sum.

I believe that the attachment was made with the hope of permanently obtaining the increase of rent according to the former summary decision, and that the rent would have been paid had only the just demand been made ; and for this reason Bunmalee Butacharj must pay the costs of both suits, except one-fourth of the costs of the stamp for a regular suit before the moonsiff for Company's rupees 50, and the usual costs for such a suit, which I estimate together with the above at rupees 5, and except the costs of serving the notices on the receiver of the Supreme Court, who had nothing to do with the case.

THE 10TH AUGUST 1846.

PRESENT : E. BENTALL, JUDGE.

No. 13 of 1846.

Messrs. Colville, Gilmore, and Co. .

versus

Anundeen Tirbadee.

THIS was a suit for the amount of a draft for rupees 1300, dated 16th April 1843, drawn at Jessore by W. H. S. Rainey on Messrs. Colville, Gilmore, and Co., in favor of Sadoo Lal Tewarce, for value received from Anundeen Tirbadee of Jessore, for the use of the Kholna indigo concern : it was drawn payable at 5 days' sight. The plaint is also for interest due on it. The principal sudder ameen gave a decree against all the defendants for the draft, with interest, from the date that notice of the suit was served.

It is not objected that the money was paid by Anundeen Tirbadee, nor that Mr. Rainey was the manager in charge of the Kholna indigo concern.

The draft is proved to have been presented in April 1843, but it was not endorsed as accepted or protested. It is not proved that the money was applied to any private purposes by Mr. Rainey, and it is allowed that he had on former occasions drawn in such a manner. Under these circumstances I think that all the

proprietors of the concern at the time the draft was written, are answerable for the amount of the money advanced as well as the manager who received it; and since it is not denied that Messrs. Colville, Gilmore, and Co. were partners in the concern, they must be held answerable, and on this appeal I cannot alter the decree of the principal sudder ameen. The appellants must pay the costs of the appeal.

THE 10TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 14 of 1846.

Anundeen Tirbadee

versus

Messrs. Colville, Gilmore, and Co., “that is to say, Mr. William Colville Gilmore, Mr. Allan Gilmore, Mr. James MacLagan, Mr. William Gilmore, Mr. Graham Robertson,” also Mr. W. H. Rainey and Sadoo Lal Tewaree.

THIS was a suit for the amount of a draft for rupees 1300, dated 16th April 1843, drawn at Jessore by W. H. S. Rainey on Messrs. Colville, Gilmore, and Co., in favor of Sadoo Lal Tewaree, for value received from Anundeen Tirbadee of Jessore, for the use of the Kholna indigo concern: it was drawn payable at 5 days’ sight.

The plaint is also for interest due from the time the draft is said to have been presented, viz. 21st April 1843. The principal sudder ameen gave the plaintiff a decree for the amount of the draft, with the interest from the date that notice of the suit was served, and costs according to the amount of the decree, and the plaintiff is not satisfied. The draft is not endorsed with the date on which it was presented, but Sree Gobind Misree has deposed to its having been presented in April 1843, and since there is no reason to doubt but that it was presented without delay, and since I have already given my opinion that the plaintiff is entitled to receive back from the defendants the amount of the draft, as determined in the decree of the principal sudder ameen, I see no reason why he should not receive interest for his money, the delay in bringing this suit not being sufficient to deprive him of his right, and accordingly I modify the decree of the principal sudder ameen by allowing interest from the 5th May 1843, to be paid by the defendants, except Sadoo Lal Tewaree, as well as full costs of both suits. The defendants, except Sadoo Lal, must pay the costs of this appeal.

THE 10TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 6 of 1846.

Rukonee Dossea

versus

Ranee Katcance, Sree Kant Sirkar, and others.

RUKONEE DOSSEA instituted a suit, on the 1st March 1844, for possession of a putnee talook, called lot Amoorca in Perg. Nuldee, and for mesne profits since the decision of a suit under Act IV. of 1810, in which suit she was opposed to Sree Kant Sirkar.

On the 30th May 1844 a supplementary plaint was made, as the property had been sold for an arrear of rent, 13th May 1844, and according to it Mr Dubus, the purchaser, was made a party to the suit. The principal sudder ameen determined that the property had belonged to Rukonee Dossea, but as it had been sold for an arrear of rent possession could not now be given to her, but that she might have mesne profits from the time of the decision of the suit under Act IV. of 1840, until the sale took place, and interest on that sum; and she has appealed against this order.

The talook had belonged to Goluk Chunder Bose, the husband of Rukonee Dossea, and his right and interest in it was sold in execution of a decree, 31st January 1842, and bought by Sree Kant Sirkar, who on the 18th June made a transfer of it to Rukonee Dossea and had the document registered on the 3d July 1843, but no notice was given to the zemindar of the alienation by Sree Kant to Rukonee Dossea; yet it appears that the zemindar Ranee Katcance suspected that the property did not actually belong to Sree Kant, for on the 7th November 1842, she issued a notice under Regulation VIII. of 1819, Section 8, Clause 2, to Goluk Chunder Bose and the "*benam*" purchaser Sree Kant Sirkar, and a similar one, on the 28th October 1843, to Sree Kant Sirkar alone.

There are also produced two receipts for rent paid on the part of Rukonee Dossea, who also at the time of the sale expressed a hope for time to pay the rent. Since Rukonee Dossea did not procure a mutation of names in the office of the zemindar, or pay the fees for alienation under Regulation VIII. of 1819, Section 5, but only registered the deed of transfer in the office of the registrar of deeds, it was not necessary for the zemindar to issue notice to her under Regulation VIII. of 1819, Section 8, Clause 2d; and on her plaint the sale cannot be upset. There are surplus proceeds of the sale in the office of the collector, and although Rukonee Dossea cannot get possession of the landed property, it would not have been improper to have passed an order respecting this money which belongs to her, and accordingly I pass the order in her favor. The appellant must pay the costs of this appeal.

THE 10TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 28 of 1844. *

Badoola Mundul,

versus

Issur Chunder Ray.

THIS was a suit to assess a juma according to the pergunnah rate, and disposed of on its merits by the sudder ameen on the 23d April 1844, and in appeal by me on the 1st October 1844.

A petition of special appeal was filed in the Court of Sudder Dewanny on the 28th December 1844, and on the 14th April 1846, the case was sent back to be tried *de novo* with reference to the remarks contained in the Court's proceeding. The plaintiff had not, previous to the institution of his suit, pursued the course prescribed in Section 9 of Regulation V. of 1812, and consequently it cannot be decreed that he may recover by suit in court, or process of distress, or confinement of person, a greater sum than he was able to do previous to the institution of this suit, and according to the decree of court dated 12th April 1841; and since his power to recover rent according to the pergunnah rate will depend on the contingency of his having pursued the course prescribed by Section 9 of Regulation V. of 1812, and it is contrary to the practice of the courts to determine points which are only *in posse*, I nonsuit the plaintiff who must pay all the costs.

THE 13TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 48 of 1845.

Kala Chand Sain and Chunder Monee Dibeā

versus

Moulvee Golām Sirwur, Mr. Dunlop, and Mr. Gilson Rowe.

KISHMUTE DEWE, a talook in pergunnah Nuldee, was registered in the collector's office in the name of Moulvee Golām Sirwur, against whom one Ram Lochun Ghose got a decree of court, in execution of which decree the right of Golām Sirwur in the said talook was attached on the 10th Assin 1246, corresponding with the 25th of September 1839, and afterwards sold. It was bought by Kala Chand Sain, who sold it to Chunder Monee Dibeā, who together have brought an action to establish what was the right of Golām Sirwur which she has bought, and to get possession of

the property: her demand is for the talook free of incumbrances, for mesne profits from the date of the sale, and for interest.

It is objected that one Nujeebolla had two sons, Golam Sirwur and Nurul Huk, and that, in 1822, he bought this property and had it registered in the collector's office in the name of Golam Sirwur, and that, on the 6th Bysakh 1246, a putnee potta of the property was given to Mr. Gilson Rowe, which was registered on the 20th Bysakh 1246, corresponding with 2nd May 1839, both of which dates are prior to the attachment of the 10th Assin 1246, and this potta is signed by Golam Sirwur and Nurul Huk, and purports that they had an equal interest in the property and gave him the potta of their entire interest. The principal sudder ameen in disposing of the case gave Chunder Monee Dibeas, &c. a decree for an 8 anna share of the zemindaree right to receive the rent from Mr. Gilson Rowe, and the plaintiffs have to pay the costs.

In the appeal it is objected that the putnee should not have been upheld, that Nurul Huk had no right in the property, and that the property had been attached in the execution of a former decree, viz. Puna Olla *versus* Golam Sirwur, prior to the 6th Bysakh 1246, and that that attachment would bar the validity of the potta.

The putnee potta appears, as far as I at present see, in every respect valid as a potta, having been registered, and there being no doubt now apparent of its being genuine, and it has since been stamped with the full legal amount of such a document. The decree of Puna Olla was fully executed without the sale of this property, and without any of the proceeds of the sale, and the sale took place only on account of the decree of Ram Lochun Ghose, so that that old attachment would not be an impediment to the validity of the potta. Respecting the right of Nurul Huk in the property, I find that he came forward on the 18th June 1845, and stated his right and was afterwards ordered to prove it, but he was never made a party to the suit by any direct order, and that the putnee potta, in the grant of which he joined, has been upheld by the court, and an 8 anna share of the talook has been decided against the plaintiffs and in his favor, although he was not made a party to the suit. Now Mr. Gilson Rowe was not originally a party to the suit but was made a defendant on the 10th April 1845, on account of his application on the 17th February 1845, and he filed the putnee potta on the 28th June 1845, and if it was proper to bring Gilson Rowe on the list of defendants on his application, it was equally proper to bring Nurul Huk on the list on a similar application. In consequence of this oversight Nurul Huk has not been made a respondent. I send the case back to the principal sudder ameen with directions to admit Nurul Huk among the defendants, and to decide the suit accordingly. The value of the stamp on which the appeal has been made may be refunded, and the principal sudder ameen may pass an order on the costs of this appeal.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 58 of 1846.

Jan Buksh and Mahomed Sheik

versus

Mr. William Bennett.

THIS was a suit instituted, before the moonsiff of Komercolly, to annul a summary decree of the deputy collector of Pubna under Regulation VII. of 1799, for arrears of rent of the year 1250, amounting to rupees 15-7-9, and to get back rupees 18-0-3, which had been deposited in the deputy collector's court on account of the said decree with costs. Jan Buksh, the ryot, states that his annual rent is Sicca rupees 24-2, according to long custom, and that he had paid the whole of it. Mr. Bennett states that the annual rent is rupees 31-15-1, according to a kabooleat, dated 26th Bysakh 1249. The moonsiff dismissed the ryot's plaint and upheld the decree of the deputy collector.

I have gone through and examined 15 appeals of the same nature as this, in which Mr. Bennett is the respondent. The kabooleats in five of the cases, besides this, are dated on the 26th Bysakh, and in three others on the 4th Jait; all these nine kabooleats are signed by Budun Paree, Kishun Kishwur Ny, Juran Takeedgeer, and Junglee Takeedgeer. The others are all dated on the 9th Jait, and are all witnessed by Karan Takeedgeer, Shudday Chowkedar, Shebo Chowkedar, and Ramjan Sheik, and the moonsiff has more confidence in their evidence than in what the ryots can urge. But I do not think the evidence of the above named witnesses particularly trustworthy.

I gather from the cases that Mr. Bennett took the ijara of the property from Ram Rutton and others, the zemindars, in the name of a gomashtha, Neelmonee Baturjea, for four years, viz. from 1247 till 1250—but having turned off this servant in 1248, he carried on his business with the ryots in his own name and that of others. In all these 15 cases the appellants are khodkasht ryots, and the kabooleats need not have been written on stamp papers, yet each above 12 rupees in value is on stamp paper: this is not likely to have been the case with voluntary engagements made for so short a time.

The ijara having had but two years to run, it is strange that so many ryots should have come forward and agreed to an increase of rent, and not only to pay the money but to sign a kabooleat to do so in an extra legal manner, which kabooleat they might with reason fear would be turned against them to make the increase of rent permanent, and in two instances the time of the engagement

is not limited. I find that the zemindar in many instances comes forward and acknowledges that the rent is as the ryots state: if he had any idea that the kabooleats were voluntary, it is most improbable that he should not allow the ijaradar to increase the rents, of which increase he would in two years derive the benefit.

I find on referring to the records of this court that Bukaolla, the late moonsiff of Komercolly, before whom these suits were instituted, having hesitated about the validity of the kabooleats, the respondent appears to have been impatient under the test which he would apply to them, and on the 4th July 1845 applied to have these suits transferred to another court.

A report was called for by me from the moonsiff, but on its receipt the petition was not granted, altho' the moonsiff appeared to desire the transfer, and intimated his fear of what might be the consequence to himself of his decision of these cases. The above written circumstance took place in July; and again on the 16th September, the moonsiff wrote a proceeding, and stated that the naib of Mr. Bennett was guilty of contempt and impeded him in transacting the business of his court, and I had to inform him that he might depend on my supporting his authority.

This moonsiff died in December 1845, and these cases were disposed of by his successor. The attempt to carry these cases with a high hand through the courts, rather adds to the suspicious points before related; and with regard to the witnesses to the kabooleats they are factory servants of the lower class, and not one of them can read or write, and it does not appear by the documents themselves by whom they were written: the witnesses take the name of a writer, but he has not been produced to verify them. I am of opinion that not one of them is a genuine document.

Mr. Bennett acknowledges the payment of rupees 18 in this case. Jan Buksh has produced a receipt for rupees 25-11-9, paid at two different times (to Gobind Sirkar who is said to have absconded,) viz. rupees 18 and rupees 7-11-9. I would have tested the receipt by the evidence of the tasceldar who wrote it, but he is said to be dead. There are witnesses to prove the payments, and there is no apparent reason for discrediting their evidence; and there is this strong collateral reason for thinking that the money had been paid, viz. there had not been in former years any occasion to go to court to collect the rents: this reason may be weakened by the ijara having only two years more to run and the knowledge of the fraudulent kabooleat, but that weakness is lessened by the acknowledged payment of rupees 18. I give the ryot a decree according to his plaint and full costs. I observe that the plaint in this suit is written on a stamp of rupees 4, which I do not think was necessary, for although the plaint is estimated at rupees 33-8, being the aggregate of rupees 15-7-9, and rupees 18-0-3, yet of these sums the less is included in the larger.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 59 of 1846.

Sunaolla Sheik

versus

Mr. William Bennett.

THIS was a suit instituted before the moonsiff of Komercolly; to annul a summary decree of the deputy collector of Pubna, under Regulation VII. of 1799, for arrears of rent for the year 1250, amounting to rupees 7-15-7, and to get back rupees 11-9-1, which had been deposited in the deputy collector's court on account of the said decree with costs. Sunaolla, the ryot, states that his rent is Company's rupees 9-9-6, and that he had paid the whole.

Mr. Bennett states that the rent is Company's rupees 15-1-7, according to a kaboolecat dated 9th Jait 1249, and that only rupees 8 had been received.

The moonsiff dismissed the ryot's plaint and upheld the decree of the deputy collector. But for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kaboolecat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Sunaolla has produced a receipt given by Gobind Sirkar for three payments as follows—rupees 6, rupees 1-9-6, and rupees 2, shewing a difference between his and Mr. Bennett's account of the payment of rupees 1-9-6. There are witnesses to prove the payments, but the written receipt cannot be proved, for Gobind Sirkar is said to be dead, and although a muktar of Mr. Bennett has, while I write, asked to have this and the other cases of the same nature put off for a month that he may try and produce Gobind Sirkar, I see no reason for doing so. I find that Mr. Bennett presented a petition to the deputy collector of Pubna on the 8th November 1843, stating that this taseeldar had absconded without making out a statement of his account up to Assin 1250, but again I find that he was sent out to collect on the authority of Mr. A. Raynean, the superintendent, on the 16th January 1844, 4th Magh 1250, as written within the document, but on the 16th December 184— as written in English, apparently by Mr. Raynean's hand at the foot of it. I am of opinion that the money was paid to Gobind Sirkar who was authorized to receive it, but owing to the carelessness with which the accounts were kept, whether it was accounted for it is not for me now to determine. I reverse the decision of the moonsiff, and give a decree in favor of Sunaolla, with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 65 of 1846.

Juran Takeedgeer,

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna, under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent of the year 1250, amounting to rupees 5-5, and to get back rupees 8-6-5, which had been deposited in the court of the deputy collector on account of the said decree with its costs. Juran Takeedgeer, the ryot, states that his rent is rupees 39-15-10, as formerly, and that he had paid the whole. Mr. Bennett states that the rent is rupees 43-8-5, according to a kabooleat dated 26th Bysakh 1849, and that he had received only rupees 39. The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into. Juran has produced a receipt of Gobind Sirkar for rupees 39-15-10, which I believe to be valid, for the same reasons as I have given in the case No. 59 of 1846. I reverse the decision of the moonsiff, and give a decree to the appellant with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 66 of 1846.

Heroo Paramanik,

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna, under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 9-14-10, and to get back rupees 13-7-10, which had been paid into the court of the deputy collector on account of the said decree with its costs. Heroo Paramanik, the ryot, states that his rent is rupees 35-15 as formerly, and that he had paid the whole. Mr.

Bennett states that the rent is rupees 45-6-10, according to a kabooleat, dated 26 Bysakh 1249, and that he had received rupees 36-8. The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Heroo has produced a receipt of Govind Sirkar for rupees 36-8, the amount which Mr. Bennett acknowledges he has received, and more than which he might not demand.

I reverse the decision of the moonsiff, and give a decree to the appellants with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 60 of 1846.

Nujeebolla Sheikh

versus

Mr. William Bennett.

THIS was a suit to annul a decision under Regulation VII. of 1799, in favor of Mr. Bennett for arrears of rent for the year 1250, amounting to rupees 3-9, and to get back rupees 7-5, which had been deposited in the deputy collector's court on account of the said decree with costs.

Nujeebolla, the ryot, states that his rent is Company's rupees 6-6-5, and that he had paid the whole.

Mr. Bennett states that the rent is Company's rupees 7-12, according to a kabooleat dated 9th Jait 1249, and that rupees 4-8 only had been received.

The moonsiff dismissed the ryot's plaint and upheld the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Nujeebolla has produced a receipt of Gobind Sirkar for Company's rupees 6-7-3, and the payment has been proved by witnesses, and for the same reasons as given in appeal No. 59 of 1846, I believe that the rent was paid to him who was authorized to receive it; accordingly I give Nujeebolla a decree with costs of both suits and reverse the decision of the moonsiff.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 63 of 1846.

Muttee Olla Pyk

versus

Mr. William Bennett.

THIS was a suit to annul a decision under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 6-4-6, and to get back rupees 9-10-6, which had been deposited in the deputy collector's court on account of the said decree with costs.

Muttee Olla, the ryot, states that his rent is Sicca rupees 7-8, as formerly, and that he had paid the whole.

Mr. Bennett states that the rent is Company rupees 8-3-6, according to a kabooleat dated 9th Jait 1249, and that he had received only rupees 2-8.

The moonsiff dismissed the ryot's plaint and upheld the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Muttee Olla has produced a receipt of Govind Sirkar for rupees 8-2, which I believe to be valid for the same reasons as I have given in the case No. 59 of 1846. I reverse the decision of the moonsiff, and give a decree to the appellant with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 64 of 1846.

Puna Olla

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna, under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 8-7-3, and to get back rupees 11-13-3, which had been deposited in the court of the deputy collector, on account of the said decree with its costs.

Puna Olla, the ryot, states that his rent is rupees 18-2-1, as formerly, and that he had paid the whole.

Mr. Bennett states that the rent is rupees 20-11-3, according to a kabooleat, dated 26th Bysakh, and that he had received rupees 13.

The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Puna Olla has produced the written receipt of Govind Sirkar, and his witnesses have proved the payment of rupees 18-2-3, and I believe the receipt valid for the same reasons as I have given in appeal No. 59 of 1846.

I reverse the decision of the moonsiff, and I give a decree to the appellants with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 69 of 1846.

Kashenath Doss

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna, under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 8-6-0, and to get back rupees 11-9, which had been deposited in the court of the deputy collector on account of the said decree with its costs.

Kashenath Doss, the ryot, states that his rent is rupees 41-9-6, as formerly, and that he had paid the whole.

Mr. Bennett states that the rent is rupees 48-3-6, according to a kabooleat dated 26th Bysakh 1249, and that he had received only rupees 41. The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Kashenath Doss has produced receipts of Govind Sirkar for rupees 41-11, which I believe to be valid for the same reasons as I have given in the case of appeal No. 59 of 1846.

I reverse the decision of the moonsiff and give a decree to the appellants with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 73 of 1846.

Bungshee Mundul

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna, under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 8-8-1, and to get back rupees 11-12-1, which had been deposited in the court of the deputy collector on account of the said decree with its costs.

Bungshee Mundul, the ryot, states that his rent is rupees 21-5-8, as formerly, and that he had paid the whole.

Mr. Bennett states that the rent is rupees 28-6-1, according to a kabooleat dated 9th Jait 1249, and that he had received rupees 21.

The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Bungshee Mundul has produced a receipt of Govind Sirkar for rupees 21-5-4, which I believe to be valid for the same reasons as I have given in appeal No. 59 of 1846.

I reverse the decision of the moonsiff, and give a decree to the appellant with the exception of 4 pic.

The appellant will get the full costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 74 of 1846.

Ramzan Biswas

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna, under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent of the year 1250, amounting to rupees 5-6, and to get back rupees 8-15, which had been paid into the court of the deputy collector on account of the said decree with its costs.

Ramzan Biswas, the ryot, states that his rent is Sicca rupees 8, as formerly, and that he had paid the whole. Mr. Bennett states that the rent is rupees 11-12-6, according to a kabooleat dated 9th Jait 1249, and that he had received rupees 7-4.

The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into. Ramzan has produced a receipt of Govind Sirkar for rupees 8, which I believe to be valid for the same reasons as I have given in the case of appeal No. 59 of 1846. The receipt states that there is no arrear, but Ramzan must pay the difference between Sicca and Company's rupees. With this reservation I reverse the decision of the moonsiff, and give the appellants a decree with full costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 117 of 1846.

Zakur Sheikh

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna, under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 8-3-6, and to get back rupees 12-2, which had been deposited in the court of the deputy collector on account of the said decree with its costs. Zakur Sheikh, the ryot, states that his rent is rupees 17-1, as formerly, and that he had paid the whole. Mr. Bennett states that the rent is rupees 20-7-6, according to a kabooleat dated 4th Jait 1249, and that he had received only rupees 13.

The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but because payment according to the kabooleat was refused on the first demand, and for reasons stated at length in appeal No. 58 of 1846, I do not think that any such engagement was voluntarily entered into.

Zakur has produced receipts for rupees 17-1, given by Govind Sirkar, the first is for rupees 13, the amount Mr. Bennett allows he has received, but a jury has given an opinion that the receipts are both written by the same person, and I believe them to be valid for the same reasons as I have given in appeal No. 59 of 1846.

I reverse the decision of the moonsiff, and give a decree to the appellants with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 118 of 1846.

Haran Takeedgeer

versus

Mr. William Bennett.

THIS was a suit to annul a decision under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 9-11-2, and to get back rupees 13-4-2, which had been deposited in the deputy collector's court at Pubna on account of the said decree with its costs. Haran, the ryot, states that his rent is rupees 21-5-4, and that he had paid the whole. Mr. Bennett states that the rent is Co.'s rupees 22-3-2, according to a kabooleat dated 4th Jait 1249, and that he had received only rupees 13-8.

The moonsiff dismissed the ryot's plaint and upheld the decree of the deputy collector of Pubna, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Haran has produced a receipt for rupees 21-5-4, given by Govind Sirkar, which I believe to be valid for the same reasons as I have given in appeal No. 59 of 1846. I reverse the decision of the moonsiff, and I give a decree to the appellant with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 126 of 1846.

Rugonath Paramanik

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 14-14-11, and to get back rupees 19-11-3, which had been deposited in the court of the deputy collector on account of the said decree with its costs. Rugonath Paramanik, the ryot, states that his rent is rupees 26-11-10, as formerly, and that he had paid the whole.

Mr. Bennett, the ijaradar, states that the rent is rupees 38-2-11, according to a kabooleat dated 26 Bysakh 1249, and that he had received rupees 24-8. The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons

stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Rugonath has produced receipts for rupees 28-9 from Govind Sirkar, which I believe to be valid for the same reasons as I have given in appeal No. 59 of 1846.

I reverse the decision of the moonsiff and give a decree to the appellants with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 127 of 1846.

Fukeer Mahamud Sheikh

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna under Regulation VII. of 1799, in favor of Mr. Bennett, for arrears of rent for the year 1250, amounting to rupees 4-14-9, and to get back rupees 8-7-3, which had been deposited in the court of the deputy collector on account of the said decree with its costs. Fukeer Mahamud, the ryot, states that his rent is rupees 8-4-11, as formerly, and that he had paid the whole. Mr. Bennett states that the rent is rupees 10-9, according to a kabooleat dated 4th Jait 1249, and that he had received only rupees 5-8.

The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into.

Fukeer Mahamud has produced a receipt for rupees 8-4-11, given by Govind Sirkar, which I believe to be genuine for the same reasons as I have stated in appeal No. 59 of 1846. I reverse the decision of the moonsiff and give a decree to the appellants with costs of both suits.

THE 22ND AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 119 of 1846.

Kashenath Biswas

versus

Mr. William Bennett.

THIS was a suit to annul a decision of the deputy collector of Pubna under Regulation VII. of 1799, in favor of Mr. Ben-

nett, for arrears of rent for the year 1250, amounting to rupees 7, and to get back rupees 10-12-6 which had been paid into the court of the deputy collector on account of the said decree and its costs. Kashenath Biswas, the ryot, states that his rent is rupees 17-1, as formerly, and that he had paid the whole. Mr. Bennett, the ijardar, states that the rent is rupees 20-3-10, according to a kabooleat dated 9th Jait 1249, and that he had received rupees 14.

The moonsiff dismissed the ryot's plaint and confirmed the decree of the deputy collector, but for reasons stated at length in appeal No. 58 of 1846, and because payment according to the kabooleat was refused on the first demand, I do not think that any such engagement was voluntarily entered into. Kashenath has produced a receipt given by Govind Sirkar for rupees 17-1, which I believe to be valid for the same reasons as I have given in the case of appeal No. 59 of 1846. I reverse the decision of the moonsiff and give a decree to the appellant with costs of both suits.

THE 24TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 278 of 1846.

Hagoo Biswas,

versus

Munshee Nuscemudeen.

THIS was a suit on account of the non-fulfilment of an agreement dated 30th Assar 1246. The agreement shews that Hagoo Biswas had received rice of different kinds, valued at rupees 57-8, and should have returned, in the following months of Badoon and Aghun, rice of the same value, as well as rice of the value of the amount of the interest of the value of the rice advanced. The moonsiff gave a decree according to the plaint, and for costs of suit, as well as for interest while the suit was pending. The ikrar is legal, and is proved by witnesses whose evidence I see no reason to doubt. It is urged that the stamp was bought a long time before the date of the ikrar, but that is not a valid objection, and the assertion of enmity is neither shewn nor is the cause of it probable, and I see no reason to doubt the correctness of the decision of the moonsiff, which is hereby confirmed.

THE 25TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 280 of 1846.

Goluknath Gose, Appellant.

IN this case Rajmonce Dossea sued Govind Chunder Chukabutte and others for rent, and the suit was disposed of according to a solanamah, and Goluknath Gose, who was not a party to the suit before the moonsiff, has appealed on the ground of his having an asserted right in the property. Since disputes between other parties respecting rent cannot injure the right of Goluknath in the land, and he can bring his own action to prove and maintain his own rights, I cannot alter the decision of the moonsiff, or even call on the parties to the suit to respond to this appeal.

THE 25TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 279 of 1846.

Tajo Sing Ray

versus

Raminder Mitter and two others.

IN this case the plaintiffs had their property attached for rent, and deposited the amount of the demand, and brought an action of replevin on the 9th June 1845. The amount which had been deposited by the plaintiffs was Rupees 19-4, and the suit was for double that amount, viz. Rupees 38-8, the plaint being written on a stamp of Rupees 4. As the suit progressed the plaintiffs were directed, on the 29th August 1845, to file their proofs, and they did so on the 25th September. On the 15th December Tajo Sing appeared by his vakeel, but made no defence, and on the 14th February 1846, the suit was struck off on default, but on a summary appeal it was ordered to be brought on the file again. The usual notices were again given, and Tajo Sing's vakeel acknowledged, on the 20th April, that he had received his instructions, yet no defence was made, although, on the 30th May, the moonsiff had prescribed the time of 8 days for it. On the 22nd June, the moonsiff decided the suit *ex parte*, although Tajo Sing was then ready to defend it; and in my opinion he (the moonsiff) was fully justified in doing so under Regulation XXIII. of 1814, Section 21, Clause 1, and Construction No. 375. Moreover in such cases as this, in which the plaintiff is obliged to deposit the amount of his plaint, the *onus probandi* in great measure falls on the defendant, and it is often the object of the defendant to delay the case in the hope that the plaintiff may be guilty of neglect, and the suit may fall under Act

XXIX. of 1841, in which case it could not be renewed as the year would have expired, and the rent would have been exacted with impunity; and the courts should as much as possible guard against this evil. Respecting the merits of the case, the ryots produced a potta shewing that their rent was Sicca rupees 85 in two villages, and their various other papers agreed with the potta: their dakilas for the year 1250, for rent of which year the property was attached, amount to Company's rupees 90-10, and the accounts written by Govind Mohun Chukabutte and Jugissur Chuturjea, the taseeldars in the two villages, agree with them; and since the bare statement of Tajo Sing, that the rent was Company's rupees 94, in only one village, is altogether unsupported, I do not think it necessary to call on the ryots to defend the appeal.

THE 28TH AUGUST 1846.

PRESENT: E. BENTALL, JUDGE.

No. 18 of 1846.

Dwarkonath Bose

versus

Sreenath Doss Moonshee.

DWARKONATH gave notice to Sreenath Doss of his intention to foreclose a mortgage of a mourusec gatec juma in turf Cawnpore, called Nij Cawnpore, &c., it having been mortgaged to him, 20th Chait 1247, for rupees 1000: The notice was given on the 27th March 1844, and before the expiration of the year Sreenath deposited the money, which with interest amounted to rupees 1486, and on the 2nd July 1845, he brought a suit to try the validity of the bond and to shew his right to get back the amount of the deposit with interest, valuing the suit at rupees 1515-15.

The principal sudder ameen gave a decree in favor of Sreenath Doss Moonshee.

The bond is *primâ facie* legal; and if the witnesses could be trusted, it is proved. But the principal sudder ameen is of opinion that the signature of Sreenath is a copy of his signature on another document, produced by Dwarkonath to shew that the signature on the mortgage bond is genuine, and on examining the two together I find that although the form of the letters is the same, yet the acknowledged signature is written with freedom, while that which is disputed has been traced by a more nervous hand.

The principal sudder ameen thinks that the signatures of the witnesses were written with different ink, I do not disagree with him on this point, although I do not think that any of them shew marks of having been written long after the others.

The witnesses say that Sreenath gave the stamp paper, but it was bought by Dwarkonath's muktar and it is said that he acted for both. Even supposing the document were genuine, the witnesses are not likely to be aware of this point, yet they would be unlikely not to try to conceal their ignorance, and I do not therefore think that this point is much to be trusted to. The bond is signed by fourteen witnesses; this is said to be suspicious, and if so much care were necessary why not rather have had the document registered? I agree that the want of registry is a great defect.

It is said to be a suspicious point that the document allows that there had been *hajut* in the amount of rent, and it might have been inserted as Dwarkonath Bose has now taken the putnee tenure in which this gatee juma is situated. It is urged in reply that it would have been very suspicious to have left out that part if there really had been any part of the rent in abeyance, and that the above argument begs a disputed question.

I see no reason to differ in opinion from the principal sudder ameen. Moreover, I find that the stamp was bought only four days before the bond is said to have been written, it must have been bought for this particular purpose. Now under such circumstances, paper is almost always rolled and not folded, yet when the document was written the paper had received its present creases, for the writing under the middle crease is quite parallel with the crease, whereas the other lines are not so straight, and the inference is that it was not written on the day it purports to have been written.

The circumstances of the case are agreeable to the decision. If a gateedar were obliged to mortgage his property for rupees 1000, he would not be likely to be able to deposit rupees 1486, and then enter on an expensive law suit with his putneedar. Considering the different circumstances of the suit, I confirm the decision of the principal sudder ameen. The appellant must pay the costs.

After writing the above and before signing it the vakeel has tendered a document amidst a number of others by which he would shew that the signature of Sreenath Doss, from which the signature on the mortgage bond might have been copied, did not come into his possession until 25th May 1844: however he will not file it, and I find that all his other documents in the bundle are registered.

ZILLAH MIDNAPORE.

THE 13TH AUGUST 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 96 of 1846.

*Regular Appeal from the decision of the Principal Sudder Ameen,
passed on the 9th of April 1846.*

Hurree Singh and Kallitunkar, (Defendants,) Appellants,

versus

Kunee Bewa, (Plaintiff,) Respondent.

THE plaintiff's pleadings in the lower court state that she occupied two and half cottahs of ancestral rent free basto land, situated in Bebeegunge in the town of Midnapore, till the year 1250 Umlee, when Kallitunkar, who had taken a farm of Bebeegunge from the rajah, gave a pottah of the land to Hurree Singh.

Hurree Singh immediately dispossessed her by pulling down the walls of her house and erecting a dwelling for himself. She applied for redress to the police and to the zemindar: the first attached the land, and the second granted her a char chittee, acknowledging her right to hold the property rent free. On the case being brought before the fouzdar court under Act IV. of 1840, the magistrate reinstated her on proof of previous possession and hereditary right; but that decision was subsequently set aside by the session judge in consequence of the plaintiff's complaint not having been brought forward within thirty days after the alleged dispossession, as directed in that enactment. The plaintiff therefore brings this suit to recover possession of the two and half cottahs of her ancestral rent free land.

The farmer Kallitunkar and the new tenant Hurree Singh filed replies to the effect that the land is not lakheraj, but was previously held by Bulram Singh, the plaintiff's brother, who executed a kubooleut, and during his life-time paid rent to the farmer. At Bulram's death, as he had no direct heirs, the land remained unoccupied, and Kallitunkar then entered into engagements with Hurree Singh who holds the $2\frac{1}{2}$ cottahs as his tenant.

From a perusal of the record it appeared that this suit was in the first instance instituted in the moonsiff's court, but that functionary being of opinion that it involved an enquiry into the right of the widow to hold the land rent free, caused the case to be transferred for trial to the principal sudder ameen's court. The principal sudder ameen sent the nuthee to the collector for report under Clause 6, Section 30, Regulation II. of 1819, and the revenue officer,

after stating that he could find no trace of the land as rent free property, recorded an opinion in favor of the widow's right, on proof of previous possession adduced by her on the trial under Act IV. of 1840 in the foudarry.

The principal sudder ameen commences his decision by declaring the real subject of dispute between the parties to be, whether the land is maul or lakheraj, and that this is the point to be decided. He proceeds to state that the deputy collector has recorded in his roobucaree that the plaintiff and her ancestors have held the land rent free, and that the witnesses in the moonsiff's court have given evidence to the same purport; while against this the defendants had nothing but their own assertions to offer. That although the zemindar's serishta afforded no record of the tenure, nor was any sunnud produced; still the long and undisturbed possession of the plaintiff's family as residents on the land without paying rent warranted a strong presumption in her favor, and the smallness of the holding accounted for the non-existence of a title deed. That the act of the farmer in granting a pottah to another person while the plaintiff was in actual possession, and residing on the land as lakherajdar, was most iniquitous, and clearly demonstrative of his intention to deny her rights. The principal sudder ameen, therefore, expressing himself as coinciding in the view taken by the deputy collector, decreed to the plaintiff the possession of the *rent free* land claimed by her.

It appears to me that the point selected for decision by the principal sudder ameen, and the subsequent proceedings under Section 30, Regulation II. of 1819, are altogether erroneous. The decree of the lower court is based on the conviction that the plaintiff is entitled to hold and possess the $2\frac{1}{2}$ cottahs as an *hereditary rent free* tenure. Now I am of opinion that the question of *title*, that is to say, whether the land is *maul* or *lakheraj* cannot be properly entertained in a suit for forcible ejectment, in which the question of rent has not been mooted on either side. The plaintiff sues for possession of that which she alleges has been taken from her without authority of law, and she merely seeks to be placed in the same position she was before the illegal acts of the defendants dispossessed her. This she has a right to expect, whether the land she occupied is liable to assessment or not; but that must be understood to be a point at present foreign to the merits of her case.

I am therefore of opinion that any report or opinion under Section 30, Regulation II. of 1819 was unnecessary, and that the decision of the principal sudder ameen, which is drawn up in conformity with the deputy collector's report, has been formed on a misconception of the merits of the case, and of the point at issue. I also hold that a just decision may be arrived at without enquiring into the *nature* of the title by which the plaintiff held posses-

sion ; consequently, no preliminary enquiry was necessary under clause 6, section 30, Regulation II. of 1819, to determine the fact of the plaintiff's previous possession and ejectment ; the suit was therefore cognizable by the sudder moonsiff, in whose jurisdiction the property is situated under section 8, Regulation VI. of 1843. This appeal is therefore decreed : the case will be returned to the moonsiff's court, where it was originally instituted, for retrial, the appellant receiving back the stamp fees.

THE 21ST AUGUST 1846.

PRESENT : H. T. RAIKES, JUDGE.

Case No. 17 of 1846.

Regular Appeal from the decision of the Moonsiff of Mohunpore, passed on the 20th of December 1845.

Goverdhun Mytee, (Defendant,) Appellant,

versus

Gris Chunder Roy, (Plaintiff,) Respondent.

THE plaintiff, respondent, sued the appellant in the moonsiff's court for the amount of an ikrarnameh given under the following circumstances.

The plaintiff held a farm, from the raja, of mehal Gopalpore for five years, and underlet it to the defendant. The defendant held the farm during 1237 and 1238, but the raja dispossessed him in 1239, when the lease had three years to run. During the period the defendant held possession he paid the plaintiff 24-10, leaving a balance when he was ousted in 1239 of 50 rupees.

The defendant in Kartick 1249 gave the ikrarnameh for 50 rupees, stating therein that the amount should be liquidated in three months. Having failed to make good his engagement, the plaintiff brought this suit to recover the money.

The defendant denied having entered into any engagement of the nature stated with the plaintiff. He says the plaintiff took the farm from the raja for a period of five years, commencing in 1237, and after holding the farm for two years, absconded with the collections. The raja then made over the farm to the defendant who holds it to the present time.

The moonsiff, on the evidence of the subscribing witnesses to the deed of agreement, decreed the full amount to the plaintiff.

I do not concur in the moonsiff's decision, and consider that he has omitted to enquire into the real facts of the case, as stated in

the pleadings, viz. the truth of the plaintiff's statement that he underlet the farm and took a kubooliut from the defendant. It seems very improbable that the defendant should voluntarily give a bond for the balance ten years after it was due, and then deny the transaction *in toto*. The case must be returned to the moonsiff to enquire into the facts as stated by the plaintiff.

THE 24TH AUGUST 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 61 of 1846.

Regular Appeal from the decision of the Acting Moonsiff of Pertabpoor, passed on the 18th of February 1846.

Kisto Misserece, (Plaintiff,) Appellant,

versus

Ramgovind Ghose, (Defendant,) Respondent.

THE plaintiff claimed rs. 274-8 annas, principal and interest of a bond for money lent to the defendant on the 4th of Assin 1250 U.

The defendant denied the debt, and stated that the plaintiff had been instigated to bring this suit by another party, against whom he had sued out execution of a decree.

The moonsiff dismissed the claim, stating his reasons for believing the defence set up by the defendant to be well founded.

The most convincing of these were the inability of the plaintiff to name in court the witnesses who attested the bond, or to point out the bond itself from the other papers filed with the nuthee; the different statements made by him and the vakcel he employed regarding the sum paid as fees in this case; and his total forgetfulness of the date of the bond, and the date on which the debt became payable.

It was likewise apparent that the witnesses, who lived in different parts of the country, gave in court false accounts of the reasons that brought them together to the plaintiff's place of residence on the day in question.

It was moreover established from the moonsiff's enquiries, that the plaintiff is in the service of one Juggernath Roy, and only possesses two beegahs of land in the village where he at present resides, and is not likely to have had the sum of 225 rupees to lend, or to have been engaged in such speculations.

I therefore entirely coincide in the moonsiff's decision, and dismiss this appeal without summoning the respondent.

THE 24TH AUGUST 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 63 of 1846.

*Regular Appeal from the decision of the Moonsiff of Kassigunge,
passed on the 27th of February 1846.*

Petaram Chuckerbutty, (Plaintiff,) Appellant,

versus

Mudhoo Majee, (Defendant,) Respondent.

THIS was a suit to recover the sum of 59-14-17-1, principal and interest of money lent to the defendant on the 26th Falgoun 1248.

The defendant declares the plaintiff has been put up by Mooktaram Majee to sue him, in consequence of his opposing the said Moóktaram Majec in his endeavours to obtain the serburaship of the village.

The moonsiff dismissed the claim on the grounds that one of the witnesses attesting the bond could not identify the person of the defendant in his court, though stating in his evidence that he could recognize him, while the witnesses of the defendant corroborated the statement made by him in his jowab, and moreover proved that the defendant was in a different part of the country at the date on which the debt is said to have been contracted.

JUDGMENT.

This is a case in which the witnesses on both sides give evidence for the parties summoning them, and corroborate statements directly opposed to each other. As the moonsiff had the opportunity of examining these parties, and judging from personal observation in whose favor this conflicting proof predominated; it is but fair in the absence of any new arguments on the part of appellant (who only repeats his former assertions) to assume the correctness of his judgment.

The appeal is therefore dismissed without summoning the respondent.

THE 25TH AUGUST 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 64 of 1846.

*Regular Appeal from the decision of the Moonsiff of Pertabpore,
passed on the 26th of February 1846.*

Musst Kusheemonessa and others, (Plaintiffs,) Appellants,

versus

Sheik Golam Aleo and others, (Defendants,) Respondents.

THE appellants sought to recover possession of a khana measuring 7 cottahs, a piece of waste land measuring 3 cottahs, the

value of fish taken from the former, and a peepul tree cut down and carried from the latter. Dispossession and other acts of which the plaintiffs complain are stated to have taken place on the 15th Bysack 1241, a period of nearly eleven years having elapsed before this suit was instituted.

The defendants state the 7 cottahs occupied by the khana is on their ancestral property, and was never in the possession of the plaintiffs or their forefathers as stated by them, and that their own family burial ground and a durgah occupies the 3 cottahs claimed by the plaintiffs as waste land.

The moonsiff states in his decree that the witnesses summoned by the plaintiffs before his court, and before the ameen deputed to make a special enquiry in the mofussil, contradict each other so completely that no dependence can be placed on such part of the evidence as speaks in favor of the plaintiffs' right. He therefore dismisses the claim.

After comparing the remarks of the moonsiff with such parts of the record as they refer to, I concur in opinion with the moonsiff and consider the evidence of the witnesses brought forward by the plaintiffs has failed to establish their right to the land, or to prove the dispossession complained of.

The appeal is therefore dismissed, and the moonsiff's decree confirmed.

THE 25TH AUGUST 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 62 of 1846.

Regular Appeal from the decision of the acting Moonsiff of Pertabpore, passed on the 19th February 1846.

Mohun Roy, (Plaintiff,) Appellant,

versus

Bindabun Doss, Respondent.

THE plaintiff sought to recover the amount of a bond dated the 27th of Agsar 1249.

The moonsiff decided the case *ex parte*, (the defendant having failed to appear after issue of notice and proclamation,) and dismissed the claim.

The plaintiff, being dissatisfied with the moonsiff's decision, appealed to this court.

Previous to entering on the merits of the case itself, it was necessary to enquire whether or not the proper steps had been taken by the lower court to satisfy itself that the notice had been duly served on the defendant. On referring to the record I observed that the acting moonsiff had not taken evidence to the serving of

the *notice*, but to the *issue* of the proclamation, which according to Clause 2, Section 22, Regulation XXIII. of 1814 was, issued from his court on ascertaining that the defendant could not be found. As Clause 3, Section 22 of the above Regulation only authorises the moonsiff to try and determine a case *ex parte* after the period limited in the proclamation, with the same precautions and in the same manner as is prescribed in Clause 2, Section 21 of the same enactment, the evidence required must be that alluded to in the Clause referred to, viz. the depositions of the parties who certify on the back of the notice the due execution of the process, and that the defendant cannot be found. No precaution of this kind is directed on issue of the proclamation. It was therefore incumbent on the moonsiff to take the depositions of those parties who are recorded on the return of the notice as certifying its due execution. This case is therefore returned to the moonsiff that he may supply the defect pointed out and then pass his decision; the appellant to receive back the stamp fees of the appeal.

THE 28TH AUGUST 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 68 of 1846.

Regular Appeal from the decision of the Moonsiff of Niccasee, passed on the 10th of March 1846.

Mullick Tajooddeen, (Defendant,) Appellant,

versus

Tarachand *alias* Tarapersaud Punda, (Plaintiff,) Respondent.

THE plaintiff, respondent, brought this suit in the moonsiff's court to recover from defendant, appellant, a balance of rent, amounting to 43-3-3, for the years 1249, 1250, and 1251, Umlee, for 9 beegahs and 13 cottahs of land held at a rent of 16 rupees per annum. The appellant declared he had paid the rent regularly, only leaving a small balance at the end of 1251 which he then discharged, and obtained from plaintiff, besides the usual dakhillas, a farkuttee or deed of release acknowledging the same.

The moonsiff considers the dakhillas and farkuttee to be forgeries, as the signature on these documents did not resemble the signature of the plaintiff which he wrote in the moonsiff's presence. The plaintiff likewise urged that he gave no receipts of this description without attaching his seal as well as his signature in attesting them. The defendant to refute this objection required that some ryots should be produced in court with the dakhillas they had received from the plaintiff, and named two individuals for this purpose. These parties were summoned, and on producing the receipts for rent given them by the plaintiff, it was seen that they bore both

the signature and *seal* of the plaintiff. This fact being taken to corroborate the plaintiff's statement, the moonsiff decreed the amount claimed by him.

The appellant urges nothing beyond the assertion that he has paid his rent as stated by him in the lower court, and that his dakhillas have not been fabricated. After going over the record of the lower court I see nothing to induce me to interfere with the moonsiff's decision, and therefore reject the appeal without summoning the respondent.

THE 27TH AUGUST 1846.

PRESENT: H. T. RAIKES, JUDGE.

Case No. 67 of 1846.

Regular Appeal from the decision of the Moonsiff of Nema, passed on the 28th February 1846.

Soojun Muhna, (Defendant,) Appellant,

versus

Nursing Muhna, (Plaintiff,) Respondent.

THE respondent attached the personal property of the appellant for arrears of rent, which attachment the appellant met by a suit under Regulation V. of 1812 in the revenue court. In that case the appellant obtained a decision in his favor with damages against the respondent. The respondent then instituted the present action to set aside the decision of the revenue court.

The moonsiff states in his decree that two witnesses prove the delivery of a kubooleut on the part of the appellant to the respondent's father, for 19 beegahs, 5 cottahs of burmottor land, which he cultivated and gathered the crops during 1251 and 1252: he therefore releases the respondent from the award of the revenue court. The appellant urged that he never gave the kubooleut or occupied the land at any time, nor is the respondent the proprietor of the land.

The moonsiff has decided the case hastily, and notwithstanding the defendant requested an ameen might be deputed into the mofussil to make enquiry on the spot into the truth of his allegations, the moonsiff has recorded his decision on the evidence of the witnesses brought forward by the plaintiff, respondent. This case appears to me to require investigation on the spot; as without ascertaining the fact of the defendant's occupancy and the plaintiff's proprietorship, no satisfactory decision can be arrived at. I therefore return the case to the moonsiff that he may direct an enquiry into the facts alleged by the defendant in his reply, and pass his decision accordingly. The stamp fees are returned.

ZILLAH MOORSIEDABAD.

THE 29TH AUGUST 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 27 of 1845.

*Regular Appeal from the decision of Sheeb Chunder Mookerjee,
Sudder Ameen.*

Joogulkishore Poorooheat, Appellant, (Defendant,)

versus

Roghoonath Pandey, Respondent, (Plaintiff.)

Rupees 661, 10 annas, 13 gundahs. Bond.

THE respondent, sued the appellant for the sum of 500 rupees on a bond, making with interest 661 rupees, 10 annas, and 13 gundahs. The case was decided *ex parte* in the respondent's favor.

The appellant, in appealing to this court from the sudder ameen's decision, denies all knowledge of the respondent, and pleads as follows: that no notice was ever served on him and no proclamation attached to his residence; that the real plaintiff is Koonwur Ramchand; that the stamp paper on which the bond is engrossed was purchased by Ramanund Bagchee, Koonwur Ramchand's agent, and nephew of his dewan (steward;) that the witnesses to the bond, to the proclamation, and to the respondent's pleader's nomination paper, are the same, and are Koonwur Ramchand's men; that had he executed any document of the kind his own neighbours would have been the attesting witnesses; that on the 24th Assar 1252, Koonwur Ramchand had him seized and made him forcibly sign a paper (as a witness,) purporting to be a deed adopting his brother Raja Kishen Chand's son, in consequence of which he, appellant, laid an information before the police darogah of thannah Mymapoor, and the magistrate; and that the respondent is a tenant of Koonwur Ramchand's brother's wife, and resides in the jurisdiction of the moonsiff of Gowas, 18 miles from his (appellant's) residence.

The respondent having failed to attend either in person or by pleader, I proceed to decide the appeal *ex parte*. On a due consideration of all the circumstances advanced by the appellant against the justness of this demand, I am of opinion that it is open to the imputation of the strongest suspicion. No cause is assigned for borrowing the money; and the evidence to the fixing up of the proclamation and the execution of the bond, is extremely unsatisfactory, and the writer of that document is said to have died. That the appellant preferred a complaint to the local police on the 24th

Assar 1252, the day on which he states he was seized and made to witness the deed of adoption, and subsequently petitioned the magistrate on the 3d Srawun following, is clear from the documentary evidence adduced. The appellant appears to be both Raja Kishen Chand's and Koonwur Ramchand's priest, between whom there is a misunderstanding regarding the point of adoption. This of course has nothing to do with the present case. I merely mention the circumstance as confirmatory of the appellant's statement. The bond is said to have been executed at Nusseepoor, where Koonwur Ramchand resides, and where the respondent, who is a resident of the village of Coolabarea, distant 18 miles from Nusseepoor, is said to have had a temporary lodging. The subscribing witnesses to the bond are Kartick poddar, Kishen Das, Roop Sha, Churun Das, and Rampershad Roy: the evidence of three of these has been taken to its execution, viz. of Kartick, Roop Sha, and Rampershad Roy. The witnesses to the proclamation are Roop Sha and Churun Das, while Roop Sha and Kartick poddar, two of the witnesses examined as to the bond, are witnesses to the pleader's nomination paper given in by the respondent. All these men are residents of Mullickpoor, distant $1\frac{1}{2}$ mile from Nusseepoor, and it is reasonable to infer that had the appellant, who appears to be very well off in the world, ever executed the bond, his immediate neighbours would have witnessed it. Moreover there is a great dissimilarity between the appellant's writing and his asserted signature to the bond.

The decision of the sudder ameen is accordingly reversed, and the appeal decreed: the costs of all the courts are charged to the respondent.

THE 31st AUGUST 1846.

PRESENT: H. P. RUSSELL, JUDGE.

Case No. 14 of 1845.

Regular Appeal from the decision of Sheeb Chunder Mookerjee, Sudder Ameen.

Hur Chuuder Roy and Lukhee Monee Bewa, widow of Madhub Dutt, Appellants, (Defendants,)

versus

Onoop Mundul, Respondent, (Plaintiff.)

Rupees 547-0-0, Rice.

The respondent stated in his plaint that Madhub Dutt, the appellant Lukhee Monee's husband, had a grain depot at his village, to whom he entrusted 500 maunds of rice for sale on the market rising: that on the demise of Madhub Dutt on the 27th

Joit 1251, he proceeded to his village, and found that the appellant Hur Chunder Roy and others had placed people over his effects, including the rice, in consequence of which he petitioned the magistrate, who ordered the darogah to enquire into the circumstance; that Hur Chunder Roy immediately sued Musst. Lukhee Monee for a debt, and had the rice attached by the civil court, which suit, on her admission of the claim, was decided in his favor: the respondent therefore sued for the value of the rice less 120 maunds, sold to another party, viz. 380 maunds, being at 30 seers the rupee. Rupees 506 12 0
 Add charges 10 4 0

Rupees 517 0 0

and on application to the civil court procured another order for the attachment of the rice.

Musst. Lukhee Monee in her reply to the suit denied that the rice belonged to the respondent, (plaintiff,) saying that the plaintiff possessed no written document to prove his claim, which, if it were a just one, he would have received; as a person named Ram Chunder who had had dealings with her late husband had done. She subsequently presented a petition denying having admitted Hur Chunder Roy's claim and admitted that the rice belonged to the plaintiff, and her pleader acknowledged the justness of the demand. The appellant Hur Chunder Roy did not attend. The rice on being sold by order of the court, was ascertained to be maunds 198, 14 seers, 5 chuttaks, the net proceeds being rupees 193, 14 annas, 6 pie; after deducting expenses incurred. Musst. Lukhee Monee subsequently filed a petition requesting that the case might be decided with reference to the tenor of her reply to Hur Chunder Roy's case.

The sudder ameen gave a decree against both the appellants.

The decision of the sudder ameen is in my judgment incorrect, and Musst. Lukhee Monee alone liable. Hur Chunder Roy, previous to the institution of his suit in the civil court on the 17th June 1844, did no more than prevent the removal of the property after Madhub Dutt's death on the 27th Joit 1251. On the 29th Joit, two days after that occurrence, the plaintiff petitioned the magistrate, and the rice was taken charge of by the local police: both Hur Chunder Roy and the respondent having instituted their civil suits within a few days of each other, the rice was attached in both cases: it was sold at the respondent's request, who has received the proceeds of the sale. The sudder ameen has given a decree for the value of the whole of the 380 maunds of rice sued for, at the assumed rate at which rice was selling

at the time of its being placed with the late Madhub Dutt. I observe however that no proof has been adduced as to the quantity made over to him. The police darogah in his report to the magistrate stated that it was about 400 maunds : actual measurement subsequently proved it to be about 227 maunds : but no imputation is made against the appellants of clandestine removal either previous to, or after the attachment, and the plaintiff's pleader admits that the amount sued for was only from computation. With regard to the value of the rice, it is unfair to estimate it at the selling price at the time of deposit ; it was left to be disposed of at an indefinite time, the respondent therefore cannot be entitled to more than it eventually sold for. The sum of 10 rupees, 4 annas, included in the amount sued for has no where been explained, and should not have been allowed by the sudder ameen.

Under the above circumstances the decision of the sudder ameen is modified, the costs of the respondent in both courts to be paid by Musst. Lukhee Monee according to the amount decided against her. Hur Chunder Roy is absolved from the claim, but, having attached the rice prior to the institution of the respondent's suit, to pay his own costs.

ZILLAH PATNA.

THE 4TH AUGUST 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 81 of 1845.

Regular Appeal from a decision passed by the second Principal Sudder Ameen, Moulvee Mohomed Rafiq Khan, dated 27th December 1844.

Dost Ali Khan, Moost. Salamut Beebee, Moost. Huffeezun Beebee, and Moost. Futto Bebee, heirs of Wullee Mohomed Khan, Bahadour, (pauper Plaintiffs,) Appellants,

versus

Moost. Muttually, Hukeem Hussun Ali, and Syud Ruffut Hossein, (Defendants,) Respondents.

To recover possession of a house, situated at Durrapore Sheir, in the city of Patna, valued at Company's rupees 1,093-7-2.

The appellants sued the respondents in the second principal sudder ameen's court for the possession of a house, their claim being that the property was a part of the estate of Wully Mohomed Khan, deceased, their father, of whom they were the co-heirs with Rowshun Ally Khan, deceased, their brother, whose widow Moost. Muttually professed herself to be. The respondents plead that the property was not inherited but acquired by Rowshun Ally, who settled it on his wife Moost. Muttually, and that this point as to its being hereditary or acquired, has been already adjudicated by the moonsiff's decree, under date 31st December 1838, and confirmed in appeal by the judge on the 22d May 1839. The second principal sudder ameen dismissed the case on the ground that it was not tenable under Sec. 10, Reg. II. of 1803, the point having been already decided in the decrees cited by the respondents. The pleas in appeal are, that the property is hereditary, and the decree referred to by the second principal sudder ameen is only good against the heirs of Rowshun Ally Khan. A perusal of the decree refutes satisfactorily these pleas, and leaves no doubt of the correctness of the view taken by the lower court. It is here specifically stated that Kuramut Ally, a brother of the appellants, claimed the house as the ancestral property of his father Wully Mohomed Khan: it was proved not to have been so, but acquired by Rowshun Ally Khan himself, who legally settled it on his wife. It is therefore ordered that the appeal be dismissed with costs, and the decree of the lower court, under date the 27th December 1844, be confirmed.

THE 6TH AUGUST 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 52 of 1845.

Regular Appeal from a decision passed by Moulvee Mohomed Ibrahim Khan, Additional Principal Sudder Ameen, dated 28th June 1845.

Pertaub Nerain, (Plaintiff,) Appellant,

versus

Hurdeal Singh, son and heir of Shewuk Ram, Munear Singh, Theekadars and Jodhee Singh, Ungnoo Singh, and Shew Shunker Singh, heirs of Munear Singh, (Defendants,) Respondents.

To recover the sum of Company's rupees 1,954, 2as., 1p., 16k., principal and interest, on account balance of rent of mouza Koelawan, pergunnah Shajehanpore, for the years 1235 and 1236 F. S.

The appellant sued the respondents in the lower court for the recovery of Rupees 1,954-2-1-16, on account of balance of rent for the years 1235 and 1236 Fussily. The respondents urged that the action was barred by Section 14, Regulation III. of 1793, more than 12 years having elapsed since the cause of action, and that the rent had been duly paid. The 2d principal sudder ameen dismissed the suit on the pleas advanced by the respondents, first, that the action was barred, and secondly, assuming that not to be the case, the proof adduced by the respondents that the rents for the years 1235 and 1236, had been paid, was good and sufficient. The proof adverted to by the 2d principal sudder ameen, was a copy of a petition presented in the foudjdarree court by the mooktear of one Bundhoo Ram, from whom the ancestor of the appellant originally borrowed the money, for the repayment of which he granted an assignment on the respondents' ancestors, the lessees of appellant's village; in his petition it was stated that the lessees had paid him the rents of 1235 and 1236. The pleas of appeal are the same as those urged in the lower court. That the cause of action did not arise when the rent became due, i. e. in 1236 and 1237, but on the 6th December 1834, corresponding with 20th Aghun 1242, when the decision of the principal sudder ameen, of the 28th September 1833, was confirmed and made final by the zillah judge. This suit was brought by Bundhoo Ram against the present appellant and his brother, on the default of the respondents' ancestors to pay the rents agreeably to the terms of the assignment granted by appellant's ancestor in Bundhoo Ram's favor, and they were both cast, leaving them their remedy against their lessees. Appellant's brother obtained a decree against the lessees (respondents) for his share. And the appellant now institutes this suit for his. I consider this plea good. The appellant's cause of action arose when breach of engagement of the respondents was established, and till that period it was a matter between the respondents and the person who held the assignment, with which appellant had nothing to do. If the view taken by the 2d principal sudder ameen be admitted, it might have been quite possible for the *laches* of Bundhoo Ram to have shut out the

appellant from all legal remedy. The proofs of the appellant, the decrees of the lower court above referred to, in my opinion fully establish his claim, and I am quite at a loss to know how the 2d principal sudder ameen could regard a miscellaneous foudarree petition as sufficient, which had been twice rejected by the civil courts in the decrees connected with this business. It is therefore ordered that the appeal be decreed, and the order of the 2d principal sudder ameen be reversed, costs of both courts payable by respondents.

THE 13TH AUGUST 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 58 of 1845.

*Regular Appeal from a decision passed by the Principal Sudder Ameen,
Mr. E. Da Costa, dated 10th July 1845.*

Baboo Behareelall Pandey, (Plaintiff,) Appellant,

versus

Beharee Chowbey, Golaubchund, and Kunhye Singh,
(Defendants,) Respondents.

To cancel the sale of a house, situated in Chowk Kullan, city Patna, valued at Company's rupees 2,133-5-4.

The appellant sued in the lower court to upset the sale of a house, on the grounds that it was conducted irregularly, and that notice of a mortgage which he held on it had not been issued agreeably to Circular Order, dated 4th September 1840. The statement of the appellant is that one Kunhye Singh, the original proprietor of the house, mortgaged it to him, that on the 13th September 1832, (after the house had been entered in the inventory of the respondent Beharee Chowbey, as the property of this Kunhye Singh to be exposed for sale in satisfaction of his decree,) appellant petitioned the court to issue the customary notice of foreclosure, and on the 27th September 1832, also petitioned, that notice at the time of sale should be given of the lien he held on the property. It however appears that on the 21st January 1843, the appellant petitioned the court that he did not wish the question of mortgage to be entered into, that he was about to receive the amount from the mortgager, and at his request the deed of mortgage was returned to him. On the 1st February 1843 Kunhye Singh executed an unconditional deed of sale of the house in favour of the appellant, and, on the 21st February 1843, the house was sold in satisfaction of the decree of the respondent Beharee Chowbey. The principal sudder ameen dismissed the suit, on the ground, that the original mortgage deed admitted by appellant was not forthcoming, and that by appellant's own showing it had been virtually cancelled by the subsequent deed of sale executed prior to the sale. The principal sudder ameen also concurred in the order (miscellaneous) of the Sudder Court, that there was no reason to reverse the sale, on the plea of informality. There is nothing new urged in the pleas of appeal as regards the

sale. I see no reason whatever for reversing it, and I consider the claim of the appellant arising from the mortgage as quite untenable. It is therefore ordered, that the appeal be dismissed with costs, and the order of the principal sudder ameen be confirmed.

THE 17TH AUGUST 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 82 of 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen, Mr. E. Dacosta, dated 10th December 1844.

Moost. Soorja Beebee, (pauper Plaintiff,) Appellant,
versus

Shah Lootf Ali, (Defendants,) Respondent.

To realize the sum of Company's rupees 1,327-1-8d., after deducting rent for six years, the theeka of half of Mouzah Cheetwar-pore, pergunnah Suleemabad.

The appellant *in formâ pauperis* sued the respondent in the 1st principal sudder ameen's court, for the rents of the years 1232, 1233, and 1237 F. S., agreeably to an account of the year 1238. The lower court dismissed the suit under the regulation of limitations, the suit being instituted on the 11th December 1841, while the rents sued for referred to the years 1824, 1825, and 1829, rejecting the account of 1238 filed by appellant, which does not show when it was drawn up. It is only necessary to observe that the calculation of the 1st principal sudder ameen, as regards the year 1237, is erroneous, the last day of that year corresponds with the 2nd September 1830, which would show the appellant to have instituted the suit within the period of limitations as regards that year. It is therefore ordered that the case be returned to the lower court for the claim of the appellant to be investigated as regards that year, the lower court pronouncing what opinion it may think fit on the remaining proofs or claims of the appellant.

THE 18TH AUGUST 1846.

PRESENT: T. C. SCOTT, JUDGE.

No. 38 of 1845.

Regular Appeal from a decision passed by the first Principal Sudder Ameen, Mr E. Da Costa, dated 6th August 1844.

Syud Jan Ali, Shah Neamut Ali, Moost. Beebee Jan, Moost. Be-chun, and Meer Hyder Ali, (pauper Plaintiffs,) Appellants,
versus

Beebee Moradun and Meer Rujjub Ally, heirs of Moost. Jhubroo, original farmer; and Panchoo Sahoo, after his decease Bhoolotun Sahoo and Bhugwan Sahoo, heirs of Poorun Sahoo, deceased, *in loco* farmer, (Defendants,) Respondents.

To recover the sum of Company's rupees 2,328-5-6, principal and interest, on account half of the surplus collections after deducting

Sicca rupees 250-8-0, or Company's rupees 267-3-2, amount advanced.

The appellants sued the respondents in the lower court, under an *ijaranameh*, dated 24th September 1813, corresponding with 14th Assin 1221 Fusily, agreeably to which the ancestor of the appellants had made over land to Moost. Jhubroo, the respondent, on receiving an advance of 501 Sicca rupees, on the condition that she was to divide the proceeds into three shares, to keep two and pay them one, and to retain possession of the land, if the amount at the expiration of the loan in 1225 was not paid, till such time as the sum was discharged. They now plead that this third share of the proceeds has never been paid them, and sue for the amount of their share. The first principal sudder ameen dismissed the suit on the ground that the respondents were entitled to hold the land until the amount advanced was re-paid, agreeably to the principle laid down in the case of Syud Athar Ali and others, appellants, *versus* Rae Nawazi Lal, respondent, dated 1st February 1830: Sudder Dewanny Reports, Vol. V, p. 8; and that independent of this, from the accounts filed by the respondents, it did not appear that they had received more than the legal interest on the transaction, and had paid the appellants their share of one-third of the proceeds up to 1231 F. S., as proved by the receipts of the appellants.

There are one or two points in this case which it does not appear to me to have been sufficiently investigated. Assuming the principle cited by the lower court, I consider it was bound to see that the terms were as strictly carried out as regards the appellants as the respondents; and the proofs adduced by the respondents that they have paid the one-third of the proceeds to the appellants are by no means clear or satisfactory: in short it would appear from the latter part of the decree of the lower court, as if respondents had paid themselves from the proceeds on account of other claims they held against the appellants. The correctness or incorrectness of the bonds under which they are made, the lower court did not consider it relevant to enquire into. It is therefore ordered that the case be returned to the first principal sudder ameen to be re-investigated, both as regards the terms of the *ijaranameh* and the proofs exhibited by the respondents to their specific performance of the same, irrespective of other matters not before the court.

ZILLAH PURNEAH.

THE 13TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 237 of 1846.

Moonsiff of Gondwarrah, Itrut Hosein.

Puhulwan Sing, Appellant, (Plaintiff,)

versus

Hurreehur Sing and others, Respondents, (Defendants.)

Fakeera Lall, vakeel for Appellant.

Seetulchunder Rae and Bamachurn, vakeels for Respondents.

THIS is a claim for rent of rupees 76-12-2, on land held by respondents, in a certain farm; moiety of which, being interest of the joint lessee, had been sub-let to appellant, with reservation of thirty beegahs, as thus stipulated, in cultivation of respondent.

The extent of land so reserved in the whole farm, as held in joint tenancy, is that now to be determined.

The appellant maintaining, that a moiety of collections from thirty beegahs in this, only, so sequestered; while respondents claim usufruct in land to this extent, in co-lessee's share, alleging that none in excess cultivated.

The moonsiff, on grounds that no interference with share of remaining lessee, was to be assumed, as contemplated by the co-lessee, granting such pottah to appellant, while it appears that respondents' cultivation, at this time, exceeded the above quantity, dismisses appellant's claim; deciding, that, in terms of the lease, he is excluded from the usufruct of a moiety of sixty beegahs in the whole farm; being equivalent to thirty so reserved in co-lessee's share.

JUDGMENT.

The clause in dispute admits, it is obvious, of either interpretation. But as correcting, at the outset, any such misconception on the part of appellant, in regard to the quantity of land really held by respondents, there was the rent-roll, to show that they had at this time nearly fifty beegahs in cultivation; for which excess, on appellant's understanding of the lease, a kabeelant should have been at once demanded; which if withheld on grounds now pleaded, and it does not appear that any other have been advanced, it was open to appellant to refuse to enter on such lease; the intent of which it should not thus have been left to the law to determine. The lessor (co-lessee) not being included as a co-defendant, the question has been considered solely as between the parties here appearing.

THE 13TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeals Nos. 238 and 239.

THE parties and ground of action being the same in these numbers, as in No. 237, they should have formed only one suit; the land being included in the same lease, though lying in different villages. But having been disposed of together, it was not thought necessary on this ground to remand them. The appeal in both numbers, as in No. 237, being now dismissed.

THE 13TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 301 of 1846.

Moonsiff of Sudder, Izzut Ullee.

Muttoormohun Dutt, Appellant, (Defendant,)

versus.

Fakeer Sahoo, Respondent, (Plaintiff.)

Brijlall Sing and Munneerooddeen, vaheels for Appellant.

Seetulchunder Rae and Fakeera Lall, vaheels for Respondent.

AN action for bond debt, laid at rupees 86-6-5; in which appellant denies execution of deed, pleading that on a former occasion a bond was given by him to respondent, and the amount duly liquidated, but deed retained, which, he adds, may be that produced, with alteration of date and amount. Of this, however, finding no trace, and the execution and receipt of amount being duly established, the moonsiff decrees for respondent; as now affirmed in appeal, no ground whatever appearing on which to interfere with such award.

THE 13TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 303 of 1846.

Moonsiff of Urrurreeah, Mr. De Souza.

Dheernath Das, Appellant, (Plaintiff,)

versus

Dhurmessur and E. D. Forbes, third party, Respondents,
(Defendants.)

Moutut Hosein, vaheel for Appellant.

Seetul Chunder, Gopee Mohun, and Fakeera Lall, vaheels for Respondents.

THE appellant claims value of rice crop, or rupees 13-9-8, his share in produce, which he alleges respondent, a dependant of third

party, forcibly appropriated. The evidence wholly failing to establish this, the moonsiff dismisses the claim; which being here again appealed to, and now heard, the decision of the lower court is affirmed, the testimony being too conflicting to sustain the same.

THE 13TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 304 of 1846.

Moonsiff of Bahadoorgunge, Uzhur Ullee.

Mahomed Alim, Appellant, (Defendant,)

versus

Bykunt Lall and others, Respondents, (Plaintiffs.)

Fakeera Lall and Raie Beharee, vakeels for Appellant.

Seetulchunder Raie and Feizoolleh, vakeels for Respondents.

THE respondents, farmers from 1251 to 1255, here sue appellant for rupees 59-3, being balance of rent in 1252 and 1253, as fixed by *dhoul*, or settlement roll, as agreed to, they allege, by appellant, who, disavowing his signature thereto, claims to hold at rupees 54-7-6, under pottah of former lessee, extending to close of 1251, as confirmed by respondents; moreover, that credit be given him for rupees 39, paid in 1253, for which he has sued to obtain receipt separately; also for rupees 11, paid in the same year, but in receipt carried to account of 1252. The respondents, in replication, deny receipt of rupees 39, which would be paid to the tehsildar, or agent of the surety, they allege, as on previous occasions, not to the surety in their absence, and when setting out on a journey, as stated by appellant, and thus prevented grafting receipt for it; and as regards misappropriation of rupees 11, that it is shewn by *dhoul*, to be due for 1252.

JUDGMENT.

The amount of rent payable, as well as that received, is here disputed. As respects the first, the supposition, that appellant took pottah of former lessee for period in excess of his lease, in expectation that it would bind his successor, is inadmissible; which, if granted, would only prove collusion between them; while no reason is assigned by him, as stated by moonsiff in his decision, for the omission, when required, to produce receipts of respondents for rent of 1251, as already settled; which would have established his plea, as to confirmation by them of the pre-existing engagement. Under the *dhoul*, therefore, as thus to be admitted, rupees 11, for which credit is claimed in 1253, was properly debited to 1252; otherwise, appellant, it may be supposed, would have included this sum in the amount

for which receipt is claimed under the cross action. In support of the last payment, it only remains to observe, there is found no proof whatever, while its improbability, under circumstances adduced by respondents, yet farther goes to disprove it. The appeal is therefore dismissed in this and the number following; the moorsiff's judgment in both being affirmed.

THE 13TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 305 of 1846.

IN this appeal the parties are the same as in No. 304; being a cross action in the same matter. It is dismissed on grounds there stated.

THE 21ST AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 306 of 1846.

Moonsiff of Kishengunge, Mr. Noney.

Mungur and others, Appellants, (Defendants,)

versus

Gokoolram Bhuggut, Respondent, (Plaintiff.)

Feizoolleh and Bamachurn, vakeels for Appellants.

Mirza Uskurree, vakeel for Respondent.

THIS is an action for bond debt, resting on account current, brought by respondent, gomashteh, on part of his principal, against appellants; laid principal and interest at rupees 76-10; who deny execution of deed, pleading an *alibi*, and demand production of books exhibiting entry. On examination of which, the amount is found duly debited to appellants, while three subscribing witnesses attest execution of bond; three denying their signatures, whom the moon-siff finding to be dependants of appellants, their disclaimer is deemed collusive, and the deed, as supported by exhibits, upheld.

JUDGMENT.

The entry in respondent's books, as appealed to in their answer by appellants, and to which no valid objection is afterwards raised, would be conclusive as to their liability, even in the absence of such bond; which the repudiation of their signatures by three witnesses, while it is attested by the like number, cannot now be admitted to render void. Not to mention the improbability of respondent so omitting to provide for its due attestation, if, as alleged, a forgery.

THE 21ST AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 307 of 1846.

Moonsiff of Khurbah, Gholam Sobhan.

Gungaram, Appellant, (Defendant,)

versus

Koolman Sahoo, Respondent, (Plaintiff.)

Seetulchunder Rae and Gopeemohun, vakeels for Appellant.

Mirza Ahmud, vakeel for Respondent.

THIS action is brought by respondent to recover value of grain, deposited with appellant, in whose favour a decree is given, with abatement as to amount, appellant admitting deposit, for rupees 245-2, being two-fold the market value.

JUDGMENT.

This is a cross suit, and the decision does little credit to the moon-siff. It appears that the appellant (defendant) was, eleven years ago, plaintiff in an action against respondent, to recover amount due by the latter on adjustment of accounts; it being set forth in the plaint that the grain for which respondent now sues, had been deposited in part payment of balance so due, which was thus sought to be recovered, credit being given for its value in account; which suit, though not defended by respondent, was dismissed, the evidence as to the settlement being considered insufficient. After eleven years, for the first time, respondent brings forward his claim to this deposit, and that, solely, on grounds of appellant's admission then made, neither cause, nor proof of it, otherwise, being exhibited; and a decree is here given him. This it only remains that I reverse, dismissing the claim with all costs payable by respondent.

THE 21ST AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 267 of 1846.

Moonsiff of Doolalgunge, Furzund Ullee.

Meer Kullum and others, Appellants, (Plaintiffs,)

versus

Rootun Gope and others, Respondents, (Defendants.)

Feizoolah, vakeel for Appellants.

Mirzah Ahmud, vakeel for Respondents.

There is an action for damages of rupees 8-8, for trespass of respondents' cattle in appellants' crop; two of whom in reply plead

not guilty, and name witnesses to prove that appellants reaped it. The moonsiff, on evidence of witnesses of appellants, and production of a *kaelnameh*, or acknowledgment of his liability, by respondent not replying, admitted the claim, which was remanded in appeal that respondents' witnesses be heard, and the said *kaelnameh*, as easily given in collusion with appellants, verified. Being re-heard, it has now been dismissed, as no mention is found of such *kaelnameh* in the bill of plaint, which therefore is held to be collusive; while witnesses of respondents duly establish their plea.

JUDGMENT.

The attempt of appellant to foist the said *kaelnameh* on the court, at such stage of the proceedings, needs no comment. It is moreover attested by only one witness, while the pleas of respondents are supported by six. The decision is therefore affirmed, the appeal being dismissed.

THE 24TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 308 of 1846.

Moonsiff of Dundkiorah, Choonnee Lall.

Kartik Biswas, Appellant, (Plaintiff,)

versus

Sheroo and others, Respondents, (Defendants.)

Seetulchunder Rae and Gopeemohun, vakeels for Appellant.

Mirza Ahmud, vakeel for Respondents.

THE appellant here sues to recover rupees 63-2, being two-fold amount, with interest, lent to respondent Sheroo, and the father of co-defendants, on the occasion of a marriage in the family, it is alleged, upwards of eight years ago, but for which no voucher was taken. The former pleading, that he was then a gomashatah in the service of appellant, and at that time indebted to him, for which he has been sued separately; who it is improbable would, under such circumstances, make a farther advance, without taking any acknowledgment from him; that appellant, moreover, yet owes him for salary; and lastly, that he, respondent, is now a man of substance, and would no doubt before have been proceeded against, had such been really due. The moonsiff dismisses this, and the suit above referred to, appealed under the following number, on grounds, that after such time, mere parole evidence is insufficient to sustain it; that the appellant, moreover, had the respondent's salary, from which it may be presumed he would reimburse himself for any such advances.

JUDGMENT.

The decision in this, and the following number, is for the same reasons now affirmed.

THE 24TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 309 of 1846.

CLAIM for rupees 10-10, on account of loan.

The judgment of the moonsiff, dismissing this claim, is here affirmed, on grounds stated in No. 308, preceding, the parties being the same and the original debt 5 rupees.

THE 24TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal Nos. 310 and 311 of 1846.

THE appellant in these numbers is the same as in Nos. 308 and 309, preceding; the claims being severally for rupees 3 and rupees 4, lent the parties, upwards of eight years ago, without voucher; which are properly dismissed by the moonsiff, as parole evidence alone cannot be admitted, after so long time, to establish transactions of such trifling nature.

THE 24TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 312 of 1846.

Moonsiff of Sudder, Izzut Ullee.

Pran Chund, Appellant, (Plaintiff,)

versus

Bowkye Sahoo, Respondent, (Defendant.)

Mirza Uskurree, vakeel for Appellant.

THIS is an action to recover rupees 212-12, value of cotton, delivered to respondent, according to entry in appellant's books; dismissed by moonsiff, under Act XXIX. of 1841; appellant omitting to produce books, required in support of the same; who now urges, that his dealings with respondent were confined to the year in which the said deliveries were made, the books for which were already in court; while those for the year previous, at the same time called for, had been transmitted in sheets to his correspondents at Arrah, which, though represented to the court, no regard was paid to it.

JUDGMENT.

This case is remanded, on grounds urged by appellant, in order that books present be examined; and if those of previous date be required, that time be given to produce them.

THE 25TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 313 of 1846.

Moonsiff of Urrurreeah, Mr. DeSouza.

Dewun Thakoor, Appellant, (Plaintiff,)

versus

Mr. A. J. Forbes, Respondent, (Defendant.)

Bijlall Sing, vakeel for Appellant.

Seetulchunder Rae, vakeel for Respondent.

THIS is an action of ejectment, on the part of appellant, ryut, against farmer and party cultivating, the appellant claiming to hold on pottah of former ryut, transferred to him, with sanction of farmer, as proved by receipt for rent, given him, as party now liable. To which it is replied, that such transfer was invalid and never recognized as stated, the receipt produced being that of the putwarry only. The moonsiff, on the grounds that such right not possessed by cultivators, and not therefore to be created by putwarry, dismisses the claim. In appeal the putwarry's receipt as before is referred to.

JUDGMENT.

As additional ground on which appellant's suit was to be dismissed, we find, that the party so transferring his lease, had deceased previous to the grant by the farmer of that now sought to be invalidated. The moonsiff's decision is therefore affirmed.

THE 26TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 314 of 1846.

Moonsiff of Kusbah, Umjud Ullee.

Musst. Madhoo Mundlaen, Appellant, (Defendant,)

versus

Khela Doss, Respondent, (Plaintiff.)

Mirza Uskurree, vakeel for Appellant.

THIS is an action brought by respondent, for possession and mesne profits of 71 beegahs, laid at rupees 134-14, against the late husband

of appellant, and others, because of his ejectment from the same, under pottah granted appellant, by farmer, co-defendant below, on plea of their surrender by Damoodur Dass, former ryut, likewise so included. The former of whom there replied, that, on the death of the father of respondent and the said Damoodur Dass, his cultivation was divided into three shares, of which respondent got one and Damoodur two; that the latter having resigned his share in 1247, in favour of the husband of the appellant, its transfer had been duly recorded, and rent paid to him (the farmer) accordingly. The moonsiff, finding the partition on father's death, between sons, wholly unsupported, and that respondent in 1247 was sued before collector, by farmer, for entire rents, and in 1248 committed to jail, in execution of decree so obtained, gives verdict in favour of respondent, against appellant and the said Damoodur Dass; the farmer being neither included, nor specifically relieved. In appeal it is urged, that respondent was liable to nonsuit, for the valuation of his interest in plaint, at three times the amount of rent, being opposed to Construction 702, while the former arguments are revived.

JUDGMENT.

The legal objection here raised, as not brought forward in the lower court, is barred by Section 4, Regulation XIII. 1808. After a careful consideration given in this case, I find no ground on which to interfere with the judgment of the moonsiff, save that of his omission to include the farmer in the award, for which no reason is assigned by him. It is now remanded in order that this be done.

THE 26TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 317 of 1846.

Moonsiff of Urrurreeah, Mr. DeSouza.

Tribhooan Thakoor, Appellant, (Plaintiff,)

versus

Maunkishen Jha, Respondent, (Defendant.)

Brijlall Sing, vakeel for Appellant.

THE appellant, a blacksmith, here sues for rupees 18-4, value of anvil and other tools, appropriated by respondent, in 1241, who pleads their being retained for advances made to appellant, who, nine years after, brought complaint, on this ground, against respondent, before the magistrate, there dismissed; as here done by moonsiff, twelve years nearly having elapsed, and there being no proof on which to award the claim.

JUDGMENT.

On the same grounds the appeal is dismissed; the application for admission of additional evidence, five witnesses having been already examined, being refused.

THE 26TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 318 of 1846.

Moonsiff of Bahadoorgunge, Uzhur Ullee.

Lullit Misser and another, Appellants, (Plaintiffs,)

versus

Sheik Tareekoolah, Respondent, (Defendant.)

Mirza Ahmud, vakeel for Appellants.

Mirza Uskurree, vakeel for Respondent.

THE respondent is sued by appellant, farmer, along with heir of surety deceased, for rupees 26-3, being rent of certain lands held by him in 1252 and 1253; who in reply denies occupying the same, declaring they were fallow, as he had before pleaded, when sued for rent from 1249 to 1251. The moonsiff, with reference to the decision thus referred to, dismisses the claim, as appellant should have taken engagements after such warning.

JUDGMENT.

The appeal in the suit for rent of previous years, being re-galled from the file of the principal sudder ameen, is this day decided, under No. 59, of 1845, which follows. The moonsiff's judgment as above, being affirmed, as the appellant was certainly bound to provide against such future contingency by taking engagements from the respondent, such plea being once urged.

THE 26TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 59 of 1845.

Moonsiff of Bahadoorgunge, Uzhur Ullee.

Sheikh Tareekoollah, Appellant, (Defendant,)

versus

Lullit Missur and others, Respondents, (Plaintiffs.)

THE respondents, farmer, and heirs of surety, sue for rupees 43-3; being rent of land due by appellant from 1249 to 1251; which the latter denies cultivating, pleading that the land referred to had remained fallow, since respondent, in the former year, entered on his lease. The moonsiff, on evidence of witnesses to its cultivation by appellant, who state farther, that when the case there about to come on, appellant sought by an offer of 30 rupees, being four under the sum demanded, to compromise it, which was refused by the respondent, decreed the amount. This being remanded by the principal sudder ameen, on appeal, for local enquiry, it would thus appear

that three beegahs had continued fallow; after such interval, however, and the witnesses before examined by the moonsiff all occupying lands adjoining, this cannot be deemed conclusive.

JUDGMENT.

The truth would here appear to lie in the mean. That appellant cultivated a certain quantity, but not the whole of the land; as confirmed by his offer, to pay a portion of the rent, and the ameen's report, as to part of the land being fallow; likewise, by respondent's neglect to demand a kabooleat, and omission, during three years, in any way to press his claim, a circumstance decidedly opposed to it, and which, in my opinion, should at least debar him from interest on the same. Under all the circumstances, I award rupees 30; at which appellant originally sought to compromise it, without interest, with costs against appellant, the moonsiff's decision being to such extent modified.

THE 27TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 319 of 1846.

Moonsiff of Kusbah, Umjud Ullee.

Tareckoollah, Appellant, (Defendant,)

versus

Bykunt Lall, Respondent, (Plaintiff.)

Mirza Uskurree, vakeel for Appellant.

Seetulchunder and Feizoolleh, vakeels for Respondent.

THE appellant here is sued for rupees 18-14, as rent of land, cultivated without pottah, on its surrender by former ryut, in 1251 and 1252; who replies that twenty-five beegahs is all the land he holds of respondent, while of that so acquired he knows nothing. The moonsiff finds it proved in evidence, that, in addition to the said twenty-five beegahs, appellant engaged to take the said land, resigned by former ryut, which is accordingly cultivated by Deanut ryut, his *addyadar*, (one who shares the produce,) who, had he been the party answerable, would undoubtedly have been sued, and not appellant; who is therefore held liable. In appeal it is urged, that there is no proof whatever to appellant's liability, the said *addyadar* being admitted, alone to occupy the land, who should therefore any wise have been included; who, in his evidence, himself admits this, also his appropriation of the whole produce.

JUDGMENT.

The appellant's objection must here be sustained. In the absence of any written agreement, the only proof of interest held by him in lands thus admitted to be cultivated by another, would be, evidence

to their sharing the produce; but of this none is adduced; while it appears that respondent declined the moonsiff's proposal, to depute an ameen, to make local enquiry, on grounds that it was unnecessary, refusing to deposit the costs. There exists, therefore, no evidence to support his claim, which must consequently be dismissed, the decision of the moonsiff being reversed; such order to prove no bar to respondent's proceeding against the actual tenant.

THE 26TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 320 of 1846.

Moonsiff of Kusbah, Umjud Ullee.

Telooke Sahoo, Appellant, (Defendant),

versus

Meer Bund Ali, Respondent, (Plaintiff.)

Seetulchunder and Gopeemohun, vakeels for Appellant.

Mirza Uskurree, vakeel for Respondent.

THIS is a claim of damages, for injury done by appellant's cattle to standing grass of respondent, laid at rupees 120-2; the plaint setting forth that 150 beegahs of land in *kurhor* or thatching grass is tenanted by respondent, which adjoins 70 beegahs of pasture land, grazed by cattle of appellant; that the annual produce of the former is from 600 to 700 solehs, or sheaves; that in this, 50 beegahs, by measurement, was for six months grazed by buffaloes of appellant, though repeatedly driven off by respondent, from which damage to this extent sustained. The appellant pleads not guilty, though a stray buffalo, he admits, may have been so found, while he urges the impossibility of any such loss being sustained by respondent, who occupies in all only 70 beegahs, from which in that season he cut 216 solehs of grass. The moonsiff, on evidence of witnesses as to respondent's holding 150 beegahs, and that 50 beegahs producing 250 solehs, were so grazed by appellant's cattle, awards damages, as assessed on the same. .

JUDGMENT.

The witnesses depose to 600 or 700 solehs, as the produce of the whole, while they state 250 or 300 to be that of one-third; either of which quantities, as representing such proportion, would exceed the highest estimate; and this given only in round numbers, the award therefore appears excessive. But the appellant farther alleges, that respondent had not 150 beegahs on which to grow it, an objection it was essential to prove unfounded; while it must be deemed remarkable, that a trespass so wanton as that here represented, should thus carefully have been confined to 50 beegahs. As the lands are stated to be in the immediate neighbourhood of the moonsiff's cutcherry, the case is remanded that he personally satisfy himself on the above points before finally deciding it.

THE 28TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 324 of 1846.

Moonsiff of Urrurreeah, Mr. DeSouza.

E. D. Forbes, Appellant, (Plaintiff,)

versus

Mussomaut Muntora, Respondent, (Defendant.)

Seetulchunder Rae and Mounut Hosein, vakeels for Appellant.

THE appellant sues for rupees 16-10, balance of rent of mouzeh Selaegurh, from 1248 to 1250; respondent, representative of her husband deceased, replying, that mouzehs Selaegur and Girjut, together held at a rent of rupees 16-10. The suit was originally decided by the late moonsiff, Mr. Almeida, in appellant's favor, but remanded in appeal by the principal sudder ameen, as only one of these had been measured; which being now done as respects both, it is found that the rent of the former at current rates, would be rupees 13-0-7, and that of the latter rupees 3-10-6, or in the aggregate rupees 16-11-1; leaving a balance due by respondent of rupees 1-11-1; which the moonsiff decrees accordingly, with costs of measurement to respondent, other costs being borne by appellant. In appeal it is urged as before, that the two mouzehs were never held together, the rent of Girjut alone being rupees 5-2-3, and of Silaegur rupees 11-6-9.

JUDGMENT.

The appellant does not establish what is thus advanced, and no objection whatever being brought to rent, as now assessed at current rates, after careful measurement, which so nearly approximates that claimed, the decision is confirmed, and the appeal dismissed.

THE 28TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 325 of 1846.

THE respondent in this suit, should have been included with the co-defendant in the previous number; the appellant being the same party, and the widows, appearing as representatives of ryuts deceased, in both, the ground of action being the same. For reasons there stated it is now dismissed.

THE 28TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 16 of 1845.

Principal Sudder Ameen, Moulvee Rooknooddeen.

Kenai Dass, Appellant, (Plaintiff,)

versus

Mungur Biswas, Respondent, (Defendant.)

*Mirza Uskurree, vakeel for Appellant.**Gouree Purshad and Feizoolleh, vakeels for Respondent.*

THE appellant here sues for balance of rent, as due by respondent for 1250 and 1251, or rupees 1,005-12, principal and interest, stating, that the farm in which respondent cultivates, was taken on lease by Rummun Dass, deceased, from 1250 to 1253, whose surety he (appellant) was and to whose lease he thus succeeded; that all the ryots had attended to give engagements, but respondent, who refused to do so, on which his lands were measured, in conformity with notice duly issued, and rent imposed at current rates, as now sought to be recovered. The respondent, in answer, pleads, previous attempts as unsuccessfully made to enhance the rent at which, as gutchdar, he has held for thirty years past.

The principal sudder ameen dismisses the suit, on grounds, that respondent's plea is established, as to the rate at which he has hitherto held, likewise that the notice served by appellant was informal, under Sections 9 and 10 of Regulation V. 1812.

In appeal it is urged, that the notice referred to was never even examined by the principal sudder ameen, while it is not stated on what ground it so held to be informal.

JUDGMENT.

The objection here made, must be sustained, as no call for, or exhibit of such notice is to be traced in the record; while no reason, as thus urged, has been assigned for its rejection. The suit is remanded that this be set forth as required.

THE 28TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 18 of 1845.

Principal Sudder Ameen, Moulvee Rooknooddeen.

Mahomed Feiz Buxsh, Appellant, (Defendant,)

versus

Gobindchund, Respondent, (Plaintiff.)

*Mirza Uskurree, vakeel for Appellant.**Seetulchunder Rae and Bamachurn, vakeels for Respondent.*

THE respondent here sues to recover rupees 2,133-5-4, as advanced appellant on his bond, dated the 31st Cheytc 1238, and payable in two years, who, in reply, admits the bond, but alleges that the

amount was repaid in full, from profits of farm, for which a lease was granted to respondent on the same date, for 1239 and 1240, in the name of Ram Dass his dependant, who received a discharge accordingly for rents of these years. The suit, it is further urged, is barred by law of limitation. The respondent, in his replication, disclaiming connection with Ram Dass, pleads, the entire absence of any reference to such assignment in the bond, the return of which, moreover, would have been required by appellant, before granting the discharge referred to. And as to the bar created by law of limitation, that his suit intermediately brought, had been struck off, under Act XXIX. of 1841.

The principal sudder ameen, on grounds, that the bond is admitted by appellant, and offset for usufruct under lease only now claimed, of which no mention is there found : by whom, moreover, the deed would certainly have been recovered, before granting such discharge for rents, gives award in respondent's favour.

In appeal it is urged, that respondent was surety, and the only party profiting by the said lease, the date of which, as that for payment of instalments, will be found to correspond throughout, with those fixed in the bond ; it is therefore prayed, that additional evidence, of parties present when the deeds were executed, be admitted. - This being granted, the evidence of two witnesses is here taken ; who, though they speak to the connection between the transactions, give no specific testimony, that could in any way invalidate the grounds of the decision given below, which is therefore affirmed.

THE 29TH AUGUST 1846

PRESENT : D. PRINGLE, JUDGE.

Appeal No. 7 of 1846.

Sudder Ameen, Izzut Ullee.

Golam Mahomed, Appellant, (Plaintiff,)

versus

Mahomed Sai and others, Respondents, (Defendants.)

Seetul Chunder and Bamachurn, vakeels for Appellant.

THIS is an action on a bond, for rupees 329, executed on the 9th Bhadoon 1244, by the respondent, and his father deceased, whose heirs are here included. The deed being duly proved, as taken for balance, admitted to be due, on adjustment of accounts the sudder ameen gives a decree against the respondent, party thereto, and against any property of the deceased forthcoming in the possession of the heirs.

In appeal it is urged, that as no objection was there taken by co-defendants, as representatives of the deceased, they should have been made liable in like manner.

JUDGMENT.

As no ground whatever exists for personally relieving the co-defendants, the case is remanded, that they be included accordingly.

THE 29TH AUGUST 1846.

PRESENT: D. PRINGLE, JUDGE.

Appeal No. 1 of 1846.

Sudder Ameen, Gholam Ushgurk.

Mirza Amjud Ullee, Appellant, (Defendant,)

versus

Sheikh Mukhdoom Buksh, Respondent, (Plaintiff.)

Mirza Uskurree, vaheel for Appellant,

Seetul Chunder Rae, vaheel for Respondent.

THE respondent, holder by transfer, of the promissory note of appellant, in favour of a third party, included with the latter as co-defendant in the court below, here sues to recover value of the same, or rupees 409-15, principal and interest, being two-fold the amount. The appellant not appearing to defend the suit, the history of the transaction is thus given, in his reply, by the co-defendant, there relieved, who states that, on the 23rd of Aghun 1240, or 27th September 1833, appellant purchased from him 70 maunds of tobacco, for Sicca rupees 193-1, for which he, co-defendant, took his promissory note at 60 days' date, in which it was stipulated, that if the tobacco, on reaching Moorshedabad, was pronounced by Beharee Lall the consignee, to be *choopat* and not *kulgee*, appellant would be entitled to an abatement; whose reply, however, confirming it to be the latter, appellant was satisfied, but, though repeatedly applied to for payment, by co-defendant, continued to put him off, till at last, being in difficulties, in Bhadoon 1249, he sold the note to respondent, for Company's rupees 125.

The sudder ameen finds none of the subscribing witnesses to be now alive, but the delivery of the tobacco to be duly proved by parties then present; that the seal and signature of the appellant, moreover, as attached to the said note, strictly resemble the same, as found in various documents exhibited; while his not appearing to disclaim such obligation, or on any ground to defend the suit, can only be received as evidence establishing his liability.

In the appeal now preferred, in which the appellant's objections are for the first time brought forward, exception is taken, first, to the admission of such deed, to which there are no witnesses forthcoming ; and if admitted, that it should be deemed valid, the amount to be paid being thus dependant on a contingency. As regards the seal, that it might be collusively obtained by the respondent, while it is denied that the signature bears any resemblance to the same as found in the documents referred to. That he, appellant, did not reply below, as he was puzzling himself to think, how such claim had been brought forward ; and, lastly, the true history is this, that he bought 70 maunds of tobacco from co-defendant, for which he paid rupees 55 ; which, on being consigned on commission sale to Behari Lall at Moorshedabad, eventually realized only one rupee per maund, or in all 70 rupees ; making it very improbable, that he should give the co-defendant such promissory note for rupees 193-1.

JUDGMENT.

The above defence, being strictly as found in the original, requires no comment. Wholly unsupported, and throughout at variance with probabilities, it would be hard to say whether its folly, or fraud, is most conspicuous. And this, it is painful to reflect, in a native judge, who has now for 25 years held the office of moonsiff in this district. On which a separate report will be submitted to the Sudder Court. On the case itself, it is only left me to observe, that a comparison of the signatures now exhibited, leaves no doubt, of that here denied being genuine ; while in the relative situations of the parties, there is no cause for wonder at the hopeless condition in which the co-defendant considered himself, for recovery of his money ; the endeavour, of the appellant finally to prevent which, had so nearly proved successful, the period of limitation having all but expired. The award of the sudder ameen is now confirmed, with all costs chargeable to appellant.

ZILLAH RAJSHAHYE.

THE 11TH AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 6 of 1846.

Appeal from the decision of the Sudder Ameen.

(A) Ishurchunder Chuckerbuttee (Plaintiff,) Appellant,

versus

(B) Bawoolchunder Paul, (C) Ramdhun Mundul, (D) Kishendhun Mundul, and (E) Muttra Nath Mundul, (Defendants,) Respondents.

THE appellant A. sued to reverse a summary order of this court (the judge's) authorizing the sale of a *jote* belonging to C, D, and E, on account of a decree obtained against them by B. The order was to this effect, "that if the *jote* was attached 30 days before it was claimed by a person named Joychunder, the sudder ameen was to reject the claim and proceed to the sale of the *jote*." Joychunder, the person who before claimed the *jote*, was the brother of the appellant, and alleged that he had got a pottah for the *jote*, on C, D, and E, relinquishing the same to the zemindar. Adverting to this, and that Joychunder had not sued, the sudder ameen dismissed the claim of the appellant, recording, that it was evident there was collusion between the zemindar and the plaintiff, and that no reason was assigned for the former *jotedar's* relinquishing their *mooroosee jote*, which had devolved to them on the death of Ram Mohun Mundul. In the "*woojoohat*," or grounds of appeal, it is stated, among other things, that the appellant was not aware that the *jote* had been attached by the sudder ameen, or he (appellant) should have brought forward his claim before.

It is clear that the appellant's brother *first* claimed the *jote*, and when he put in his claim the appellant could also have petitioned; both claiming it at different times is of itself enough to throw suspicion on both their claims. I therefore see no reason whatever for disturbing the sudder ameen's decision, and dismiss the appeal.

THE 11TH AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 9 of 1846.

Appeal from the decision of the Sudder Ameen.

Messrs. French, Hodges and Co., (Defendants,) Appellants,

versus

Grishchunder Roy, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover from appellants 349 rupees with interest on account of *wakeel's* fees, and he obtained a decree *ex parte* from the sudder ameen for the amount. The grounds of appeal are, that appellants appointed *seven wakeels*, besides the respondent, to conduct their cause in the principal sudder ameen's court, and accordingly appellant was only entitled to receive $\frac{1}{4}$ th, or Company's rupees 43, 10 annas.

It would appear there was a separate *wakalutnamah* given to the respondent, in which it is set forth that they (appellants) would settle separately with him, but how and at what rate is not specified. The case having been decided *ex parte* after the usual notice and proclamation being served at the principal factory of the concern, (which was quite sufficient,) under the Sudder Dewanny Adawlut Circular Order of the 12th March 1841, No. 141 of vol. III, the pleas of the appellants cannot be now investigated; and with regard to one, that the case was decided in one month and eight days, for such a case I consider it occupied a long time. The appeal is therefore dismissed, and as the respondent has appeared, *by wakeel*, without any notice being served on him, the parties must pay their own costs in this appeal.

THE 20TH AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 64 of 1845.

Appeal from the decision of the Moonsiff of Bauleah.

Neemay Chunder Sircar, (Plaintiff,) Appellant,

*versus*Sonatun Sircar, Ramlochun Sircar, and Purkit Haldar,
(Defendants,) Respondents.

THIS was a suit to recover 100 rupees lent on bond with interest to the defendant on the 16th Aug 1243 B. S. corresponding with the 27th January 1837 A. D. The moonsiff, with reference to a certificate filed by the defendant Kallee Churn, who called himself Purkit Haldar, alleging that he was employed on the date of the bond piloting a Government steamer from Surdah to Bhogwangollah, dismissed the suit. The appeal was admitted on the 29th

December 1845, as no proof had been taken to the two certificates filed being genuine, and on the 15th May last a letter was addressed to Captain Johnston, the controller of the Government steamers, to ascertain from the commanders of the steamers whose names were affixed to the certificates, if they had given them, and also if any steamer had left Calcutta in the month of January 1837 for the upper provinces, and by what route. Mr. Sutherland, the secretary of the Marine Board, on the 19th May replied that both Mr. Scott and Mr. Sparling, whose names were affixed to the certificates, were dead, but that the signatures looked like their's; that the Jumna Steamer left Calcutta on the 14th December 1836 for Allahabad, by the Soonderbun route, and passed Rampore Bauleah on the 23d idem, and arrived in Calcutta on her return voyage on the 3d February 1837, she would therefore have been at Rampore Bauleah on or about the 27th January, but the pilot would have brought her from Bauleah to Surdah, not as the certificate says from Surdah to Bauleah. Adverting to the above, and the fact of the person who advanced the money, on account of the plaintiff, being also dead, the nazir was directed to produce both the appellant and respondents on the 29th of May. The respondents all attended, and being examined denied they had borrowed any money of the appellant. On the 24th of June the appellant's *wakeel* was desired to produce his client in 2 weeks, but has not done so, only a petition has been filed, setting forth that the appellant did not know who had borrowed the money, as his business was conducted by his *gomashtahs*. Under these circumstances I see no reason for disturbing the moonsiff's decision, and dismiss the appeal. Appellant to pay all the respondents' costs besides his own.

THE 20TH AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 80 of 1846.

Appeal from the decision of the Moonsiff of Bauleah.

Purkit Manjhee, ((Defendant,) Appellant,

versus

Sheeboo Misser, (Plaintiff,) Respondent.

THE respondent sued the appellant to recover 62 rupees, 14 annas, being 33 principal and the rest interest of a bond given by appellant to the respondent on the 9th Bysakh 1245 B. S.

The appellant denied the debt and receipt of the money, and alleged that the suit was a *benamee* one by Neemay Chunder Sircar, the appellant in the preceding case: he also pleaded he was again piloting the Jumna steamer on the day the bond bears date, i. e. 20th April 1838, and filed a certificate to prove this. The moonsiff held the payment of the money and delivery of the bond

by appellant to respondent fully proved; that though the appellant might have piloted a steamer on that day from Surdah to Bhogwangolah, there was plenty of time for him to have borrowed the money at Surdah before he started with the steamer; and that there was no proof whatever that the plaintiff was a servant of Nemay Chunder's: he therefore decreed the claim. The grounds of appeal are the same as the pleas put in by the appellant in the moonsiff's court. On examining the certificate (in a small memorandum book) I have no hesitation in saying the date has been altered from the 10th to the 20th April 1838. The next certificate in the book was dated 11th April, but has been altered to 22d April, and the "d" above it is clear has been added subsequently to the original entry made in the book. It will never do to allow the appellant to *weather* this claim as he did the former one. The appeal is therefore dismissed and the moonsiff's decision affirmed.

THE 21ST AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 51 of 1846.

Appeal from the decision of the Moonsiff of Dhoobulhuttee.

Inder Narain Shah and two others, (Defendants,) Appellants,

versus

Ramanund Shah, (Plaintiff,) Respondent.

THIS was a suit to recover a sum alleged to be due under an instalment bond with interest. The plaint set forth that the appellants (defendants,) being indebted to the respondent (plaintiff) in the sum of 50 rupees, agreed to pay the same by instalments and gave the latter an agreement to this effect paying down 2 rupees; but failing to liquidate the balance, the plaintiffs sued to recover the whole of the amount of the *kistbundee* with interest, amounting to 61 rupees. The defendants not appearing, the moonsiff, on the 21st March 1846, gave the plaintiff a decree *ex parte* for the sum claimed. The grounds of appeal are that the notice and ishtehar were not served before "neighbours," as prescribed by the Regulations, that they (appellants) knew nothing of the suit, nor had they given any *kistbundee*. In this zillah, in all petty cases, the practice obtains of serving the notice and ishtehar at the same time, by the same *peon* to lessen the expense, and from the return made by the *peadah* it would appear that the ishtehars were stuck up on the houses of the defendants on the pointing out of a servant of the plaintiff, before *one* inhabitant of the village in which the defendants resided, and a person residing in another village, and the latter and the servant proved the service before the moonsiff. Clause 3, Section 19, Regulation XXIII. of 1814, required the service of a notice "before the defendants' neighbours, or any *mundul*, or *putwaree*, or other principal inhabitant of the village, or *mohulladar* of the

ward," but adverting to the remarks of the Sudder Court at page 127 of the Report on the Administration of Civil Justice in Bengal for 1837, where it is stated, "that when a peon is employed under Section 5, Regulation VII. of 1832, to serve a notice on a defendant, his statement to his having served it should be considered sufficient without further proof of the fact," I see no reason to doubt the service, more than the moonsiff, as two witnesses supported the peon's statement, and though neither were *neighbours* there is no allusion to the necessity of their being so, either in Construction 776 (given before the opinion in the Report quoted above) or in Regulation VII. of 1832. The decision of the moonsiff is therefore affirmed and the appeal dismissed.

THE 22ND AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 52 of 1846.

Appeal from the decision of the Moonsiff of Bograh.

Kishennath Gooha, (Plaintiff,) Appellant,

versus

Pubun Nussou, (Defendant,) Respondent.

THIS was a suit instituted by the appellant to set aside a summary award of the deputy collector of Bograh, disallowing a claim for rent under Regulation VII. 1799, brought against the respondent and two others. Two of the defendants, before the moonsiff, admitted the justice of the demand made on them, and on their admissions the moonsiff gave the plaintiff a decree against them, exempting Pubun Nussou, the respondent, who all along denied the legality of the demand and pleaded he had relinquished the *jote* for which rent was claimed. The grounds of appeal are quite irrelevant, dwelling on a foudarry complaint, and which the appellant alleges was made *after* he instituted this suit, and not before as stated by the moonsiff. That it was before or after matters very little. The deputy collector ruled the respondent had relinquished the *jote*, and there has been nothing shewn to controvert this. The appeal is therefore dismissed.

THE 22ND AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 54 of 1846.

Appeal from the decision of the Moonsiff of Shahzadpoor.

Hurreenath Shah, (Plaintiff,) Appellant,

versus

Rajoo Paramanick and eight others, (Defendants,) Respondents.

THE appellant sued the respondents to recover 100 rupees with interest, lent to them, on bond, on the 23d Cheyt 1250 B. S. The moonsiff, not crediting the evidence, adverting to the *alibi*

pleaded by one of the defendants, and established, and to the fact of another of the defendants being able to write, when his signature was not affixed to the bond, dismissed the claim. In the grounds of appeal, among other matters it is alleged, that the respondent who pleaded he could write, learnt to do so *after* this suit was instituted, to defeat the appellant's claim. He may have done so, or he may have learnt for some other beneficial purpose. The fact of nine persons subscribing a bond is of itself suspicious, or if they did, from the very fact of so many being present, it would have been easy to prove they gave the bond; and when the suit was lodged, the first thing the plaintiff did, was to get an attachment under Regulation II. of 1806 of the defendants' property. Under these circumstances I see no reason for disturbing the decision of the moonsiff. The appeal is therefore dismissed.

THE 22ND AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 55 of 1846.

Appeal from the decision of the Moonsiff of Shahzadpoor.

Hurreenath Shah, (Plaintiff,) Appellant,

versus

Munai Khan and eight others, (Defendants,) Respondents.

THIS suit was instituted, by the same appellant as in the last case, to recover from the respondents 128 rupees with interest, lent to them on bond also on the 23d Cheyt 1250 B. S. The moonsiff, not crediting the evidence, and again adverting to the fact of one of the defendants whose name had been subscribed for him to the bond being able to write, dismissed the claim. In this case there was no attachment, but for the reasons given for the dismissal of the appeal in case No. 54, this appeal is also dismissed.

THE 22ND AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 58 of 1846.

Appeal from the decision of the Moonsiff of Nattore.

Mohboo Mundul, (Plaintiff,) Appellant,

versus

Bangah Chowkeedar and eight others, (Defendants,) Respondents.

THIS was a suit to recover damages for abuse, &c., given by the respondents to the appellant. Damages were laid at 150 rupees. The moonsiff, adverting to the fact of the plaintiff omitting in his plaint the names of two persons whom he had complained against at the thannah, and to his making three others defendants whom he had not before accused, dismissed the suit without taking any evidence. Against this decision the plaintiff appeals; and I am of opinion these were not sufficient reasons for dismissing the suit

without going into the merits. From the plaint it would appear a woman died intestate, and on the requisition of the darogah the appellant prepared a schedule of the property the deceased had left. This gave great offence to the respondents, who went to his house, began to abuse him, and then threw brick-bats into his premises. The appellant represented this to the darogah, who reported the matter for the orders of the magistrate, who directed that if the petitioner had any complaint he was to come in and complain at the station. Nattore, where the occurrence took place, is some 30 miles off, and rather than subject himself to the expense and trouble of coming such a distance, the plaintiff instituted this suit for damages, which he could not have obtained in the foudarry court under Regulation XIV. of 1797, (though both in the Bombay and Madras presidencies the criminal courts may award damages.) It is not improbable that the plaintiff may have in the first instance made a mistake in naming some of the persons who abused him, and at any rate one appears to have been a chowkedar whose duty it was to prevent a breach of the peace instead of raising a ferment. The case is therefore sent back to the moonsiff to try on its merits, calling for any proceedings in the foudarry court, or in this (if necessary,) relating to the case connected with the property of the intestate. The value of the stamp on which the petition of appeal is written to be returned to the appellant, and the usual order as regards costs.

THE 24TH AUGUST 1846.

PRESENT: G. C. CHEAP, JUDGE.

No. 59 of 1846.

Appeal from the decision of the Moonsiff of Dhoobulhutte.

Peera Fuqeer and three others, (Defendants,) Appellants,
versus

Ramkishan Choudree, (Plaintiff,) Respondent.

THE respondent sued the appellants to recover 50 rupees, lent to them on bond on the 2nd Assar 1252 B. S., which with interest amounted to rupees 53-12-6. The moonsiff gave the plaintiff a decree. The defendants pleaded that the plaintiff never went to Nussarpore where it was alleged the money had been lent, but the moonsiff did not summon their witnesses, considering the loan proved. The grounds of appeal are the same as the answer to the plaint, and as the moonsiff should have both summoned and examined the witnesses to the defendants' plea before deciding the case, it is now sent back that this may be done. The value of the stamp on which the petition of appeal is written to be returned to appellants, and the usual order passed as regards costs.

ZILLAH RUNGPORE.

THE 26TH AUGUST 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 2 of 1845.

*Appeal from the decision of Mr. Thomas, Officiating Principal
Sudder Ameen.*

Petumber Surma Bhuttacharge, Appellant, (Defendant,)

versus

Ramsoonder Roy, Zohoordeen Choudry, and others, Respondents,
(Plaintiffs.)

THIS suit was instituted by the respondents against the appellant and his ryot Sonaram Doss, for the recovery of eight bissees of alluvial land, which had been carried away from their estate of Tarrapore, on the north of the Manas river, by the encroachment of the said river, and which had been, subsequently, restored by the river reverting to its original course, of which the appellant had been put in possession, on appeal, consequent on a summary suit under Act IV. of 1840.

The suit with wasilat was laid at 1,100 rupees.

The appellant denied this statement of the respondent, alleging that the alluvial land in dispute formed a part of his opunchuki estate, situated in Hurree Ram Lushkar, on the southern bank of the river Manas, which, during ten or twelve years, had been washed away by the river, which having closed at each of its extremities, formed a new channel due east and never returned, as asserted by the respondent, to its original course, and, which destruction of his estate is clear, by the decrease of his rucba compared with what was recorded of it in the quinquennial register of 1212 and the butwara papers of the collectorate of 1241.

The defendant, Sonaram, filed no answer.

The lower court, by its roobakaree of the 29th January 1845, decreed the case in favour of the respondents on an *ex parte* report of the local ameen of the 6th January 1845, without having called upon either of the parties in the suit for any evidence, or even caused the ameen's report to be verified. I consider a decision founded on such ground to be very imperfect. The lower court ought to have ascertained which party was in possession prior to the appellant's summary suit, under Act IV. of 1840, complaining of dis-possession. It was necessary for the respondents to have been required to prove their plaint, and the appellant to produce the docu-

ments cited by him in proof of what had been the *rucba* of his estate, after which the small portion of the lands remaining in his possession should have been measured in order to ascertain if his estate had suffered or not from the encroachment of the river Manas, as alleged.

It moreover appears that the lower court erroneously stated in its decision that it had reversed the summary decision of the magistrate under Act IV. of 1840, instead of that of the session judge on appeal.

For these reasons the appeal is decreed and the order of the lower court reversed, to which the case will be returned for re-investigation with reference to the points above stated and any other enquiries which may be requisite.

The value of the stamp of appeal will be returned, as usual, to the appellant.

THE 27TH AUGUST 1846.

PRESENT : T. WYATT, JUDGE.

Case No. 3 of 1845.

*Appeal from the decision of Mr. Thomas, Officiating Principal
Sudder Ameen.*

Alapoo Shah Fuqueer, Appellant, (Defendant,)

versus

Kholaram Doss, Respondent, (Plaintiff.)

THE respondent brought an action against the appellant and five other defendants for the recovery of thirty-two rupees, the estimated value of fish, which the defendants had embezzled out of two fisheries, situated in talook Hur Ram, chuckla Canjee Haut, for which and another fishery he held a pottah with an yearly assessment of thirty-one rupees,—together with interest and costs.

The appellant and two other defendants refuted the charge by stating that the fisheries in dispute attached to their lakheraj lands comprised in talook Seebram, pergunnah Teppa, chuckla Futtehpore, for which they held sunnuds, and which they had hereditarily possessed and to which the respondent had no claim.

The lower court, on proof being adduced of the previous possession of the respondent in respect to these fisheries and of the validity of the lease held by him, and of the trespass and misappropriation committed by the appellant and the five other defendants, during one day on each of these two fisheries, and the defendants having neglected, after repeated calls, to produce an authenticated copy of the taidad containing the registry of their grants, adjudged each of the defendants, though the ameen had reported the value of the fish taken to be sixteen rupees, fourteen annas, to pay one rupee

each, in satisfaction of the damage incurred, with interest on the sum decreed from the date of decision and costs equivalent to the amount of decree.

From this decision, the appellant alone appealed, only urging as his grounds of appeal that the complaint was false and the decision unjust.

From an examination of the papers, seeing no reason for impugning the justness of the decision appealed from, it is ordered that the appeal be rejected and the order of the lower court be confirmed.

THE 27TH AUGUST 1846.

PRESENT: T. WYATT, JUDGE.

Case No. 4 of 1845.

Appeal from the decision of Mr. Thomas, Officiating Principal Sudder Ameen.

Mohummud Tuckee Moonshee, after his death Khyrunessa Choudraïne, mother of the two minor sons, and wife of Mohummud Tuckee, and Ala Bebee, also wife of Mohummud Tuckee, Appellants, (Defendants,)

versus

Lukhee Prea Debia, Respondent, (Plaintiff.)

THIS suit was instituted by the respondent, against Huleema Bebee and the late appellant Mohummud Tuckee, for the recovery of a seven anna portion of a lakheraje tenure, denominated Khamar Jumalpoore in pergunnah Kabilpoore, which Huleema Bebee had sold to her, on the 13th Aughun 1240 B. S., for the sum of one thousand rupees, and for which she possessed a registered deed of sale, bearing the seal and signature of the said Bebee, but of which the defendants had collusively kept her out of possession, and which tenure had, afterwards, been resumed and a settlement of it formed by the collector with Mohummud Tuckee and Berkhoordar Choudry.

The suit was laid at 1,308 rupees, 6 annas, with wasilat.

The defendant Huleema Bebee gave in no answer. The appellant Tuckee Mohummud admitted that Huleema Bebee, from whom the respondent alleges to have purchased a seven anna portion in the estate, was formerly a joint proprietor to that extent, but denies that the respondent can be admitted to any proprietary share now after the collector had made a settlement with him and Berkhoordar Choudry.

The late principal sudder ameen, Syud Suddrul Hossein, dismissed the plaint with costs, considering that the settlement could not be interfered with by any court of justice, and giving it as his opinion that the respondent was entitled to a return of the purchase money.

From this decision an appeal was preferred, which, on the ground stated by the lower court for dismissing the suit, was rejected, but on an application for a review of judgment, the decision of the appellate court was deemed erroneous and a review of judgment was applied for and granted by the Sudder Dewanny Adawlut, under date the 17th June 1842.

The appeal was then re-tried and decreed, and the decision of the principal suddar ameen was reversed, and the case was returned for re-investigation, the evidence of all the subscribing witnesses to the deed of sale not having been taken, and for other reasons.

The lower court, having re-tried the case, and considering the deed of sale to have been fully proved, and that the respondent was entitled to hold a seven anna portion in this resumed mehal, decreed the case accordingly in favor of the respondent with costs.

From this decision an appeal was preferred, the grounds of which were that the evidence of the two witnesses to the deed of sale, which had been ordered to be taken, had not been taken, and that one witness to the deed of sale had deposed to the purchase money not having been received, and that Huleema Bebee, the seller, had never been in possession, with other frivolous objections.

On a perusal of all the papers, there being no reason for impugning the justice of the decision appealed against, it is ordered that the appeal be rejected and the order of the lower court be upheld.

ZILLAH SARUN.

THE 6TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 22 of 1846.

An Appeal from a decision passed by the Moonsiff of Pursah, dated 27th January 1846.

Uhdheen Saho, (Defendant,) Appellant,

versus

Benigir, (Plaintiff,) Respondent.

CLAIM, Company's rupees 145-1-9, principal and interest, on account of a bond dated 30th Bhadoon 1242 Fussily.

The plaintiff instituted his suit in the moonsiff's court of Pursah, and obtained a decree on the 27th January 1846.

Defendant, dissatisfied with the moonsiff's decision, preferred this appeal on the 20th February 1846.

On the 19th June 1846, the nazir reported the death of the appellant. Under these circumstances a notification was issued agreeably to the Circular Orders of the Presidency Sudder Court, dated the 5th September 1845, No. 39, for the attendance of the heirs of the deceased appellant, but no one having appeared within six weeks, it is

ORDERED,

That the appeal be dismissed under Act XXIX. of 1841, and the costs of appeal be defrayed by appellant.

THE 11TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 34 of 1844.

A Regular Appeal from a decision passed by the Principal Sudder Ameen of Sarun, dated 30th July 1844.

Ramessur Dutt, himself and guardian of Bhagbutpershad, *alias* Rucktoo Sing, minor, and Dhunasur Dutt, heirs of late Kishenpershad deceased, (Plaintiff,) Appellant,

versus

Hurrucklal and Musst. Muckhun Koer, (Defendants,) Respondents.

CLAIM, Company's rupees 1528-14-6, on account of a bond dated 11th Bysack 1246 Fussily.

The appellant and the wakeel of the respondent having this day presented petitions stating that the cause of action had been amicably adjusted between the parties, it is accordingly

ORDERED,

That this suit be struck off the file and the institution fee be returned to the appellant, under the Circular Orders of the Presidency Sudder Court, No. 5, dated 23rd January 1846.

THE 11TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 17 of 1845.

A Regular Appeal from a decision passed by the Principal Sudder Ameen of Sarun, dated 27th May 1845.

Modun Mohun Sahee, (Defendant,) Appellant,

versus

Bunwarilal, (Plaintiff,) Respondent.

CLAIM, Company's rupees 2,313-5-4, principal, and Company's rupees 370-2, interest, total Company's rupees 2,683-7-4, on account of balance of account by mutual agreement.

It appeared in this case that plaintiff had obtained a decree of court against defendant on the 23d August 1841, for the first instalment of a debt due, and was about to institute a second suit for other two instalments when defendant adjusted the matter by acknowledging himself indebted to plaintiff in the sum of Company's rupees 8,500, and executed an "ikrarnamah" or agreement dated 29th January 1843, (assigning a "peshgee" deed dated 7th June 1843 for Company's rupees 6,186-10-8, executed by Musst. Mungla Kooer and Kousla Kooer in favor of Shamsunder Sahee, defendant's son,) to Bishendas, plaintiff's nephew, in liquidation; and the plaintiff states it was further agreed that the balance, viz. Company's rupees 2,313-5-4, should be paid in cash. In consequence of this mutual adjustment of the whole debt, including the first instalment, for which a decree had been obtained, the plaintiff's application for execution of his decree was at the instance of defendant struck off the file. Plaintiff now sues for the balance above mentioned.

Defendant urges that the agreement contained no stipulation for the payment of the balance, and by charging compound interest both principal and interest becomes forfeited, and that the stamp on the "ikrarnamah" is insufficient to cover the balance, and that the witnesses to the "ikrarnamah" are menials in plaintiff's service, whose evidence is not to be credited.

The principal sudder ameen decides that the plaintiff's claim is just, and defendant's pleas are insufficient: that Company's rupees 8,500 was, upon an adjustment, declared to be the balance due to plaintiff, and in part payment of which an assignment was made to the amount of Company's rupees 6,186-10-8, and the

balance was promised to be liquidated in a few days, therefore this claim for the balance should not be resisted—passing a decree in favor of plaintiff for the amount, with interest to date of institution, and from that date to date of payment, on the full amount decreed, including interest and costs. Defendant in dissatisfaction appeals against this decree.

JUDGMENT.

I find 'no sufficient reason to interfere with the decision of the principal sudder ameen in this case. The "ikrarnamah" which is not denied by appellant, contains a distinct acknowledgment of the adjusted sum of Company's rupees 8,500 due to respondent, and in liquidation of which a deed of assignment was made by appellant to respondent, with the consent of defendant's son (in whose name it is executed,) for 6,186 only, in part payment thereof. Moreover the evidence adduced by respondent proves satisfactorily that when this assignment was made appellant stipulated to liquidate the balance in ten days. The remaining objections taken by appellant are of no avail. I do not find any overcharge an account of interest; and even were it so, an *avowed stipulation* for illegal interest would only have caused the *interest* to be forfeited (under the provisions of Section 8, Regulation XV. of 1793) *not the principal*, to occasion the loss of which, there must be some device with a view to evade the interest laws and obtain exorbitant increase.

ORDER.

For these reasons I affirm the decision of the court below, and dismiss the appeal with costs.

THE 17TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 18 of 1845.

A Regular Appeal from a decision passed by the Principal Sudder Ameen of Surun, dated 29th December 1843.

Musst. Kutrani Koer, (Plaintiff) Appellant,

versus

Meer Fuzul Hasen and others, heirs of Meer Sustoo, (deceased)
Musst. Belon and others, heirs of Meer Chukouri, (deceased)
and Gunga Rai and Bode Rai, Cultivators, (Defendants,) Respondents.

CLAIM for possession of 2 beegahs of rent free land in Dehy-awn Chuprah, estimated value Company's rupees 230.
Plaintiff states that she possesses 4 beegahs of rent free land in the village, which she inherited from her husband and his ances-

tors; that since 1235 Fussily Gunga Rai has cultivated 2 beegahs and paid 10-rupees rent for the same in cash, and the remaining 2 beegahs are paid for in kind; that in 1245 Fussily, Meer Sustoo and Chukouri, among the maliks of $8\frac{1}{2}$ annas share in the village, induced Gunga Rai ryot to withhold his rent, for which she accordingly sued, but in appeal the decree passed in her favor was reversed, and she was told by the late judge to establish her right to hold the land rent free for which purpose she institutes this suit.

Defendants answer that plaintiff produces no rent free "sun-nud:" that the land is not registered, and therefore the claim is clearly inadmissible, and the land liable to resumption.

The principal sudder ameen on the pleas adduced by defendant dismisses the suit with costs.

JUDGMENT.

It was held in appeal that appellant seems to rest her claim upon uninterrupted possession for many years, and stating that the land was recorded as rent free in certain papers of an ameen deputed to measure and divide the villages 30 years ago, and that the village putwary has also entered the land as a rent free tenure in his papers; but by Regulation XIX. of 1793 length of possession gives no validity to an invalid title, still less to a claim unsupported by any title whatever. Proprietors are at liberty to dispossess such claimants, and to reannex such land to their estate, without previous application to the courts. Both the ameen and putwary alluded to may have made their entries from interested motives, indeed the latter is stated to be a relation. At any rate their returns are no guide in the adjudication of such like cases.

ORDERED,

That this appeal be dismissed with costs and the decree of the principal sudder ameen be confirmed.

THE 20TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 85 of 1846.

A Regular Appeal from a decision of the Moonsiff of Sewan, dated 18th February 1846.

Bhowany Misser, Jewun Misser, Monorut Misser, and Musst.

Phooljharee, (Defendants,) Appellants,

versus

Gujadhur Ram, (Plaintiff,) Respondent.

CLAIM for possession of a verandah and small room, with back rents from 1252 Fussily: total estimated value, with interest, Company's rupees 181-6-9.

Plaintiff instituted this suit on the 26th July 1845, claiming possession of the above premises, one 33 by 5, and the other 16 by 6 cubits, situated between his and defendants' houses at Alee-gunge Sewan, representing that they formerly belonged to his ancestor Kedaroo Lal, from whom defendant took a lease on 1st Asin 1245 Fussily at a rupee a month, but had never executed any written agreement although he had promised so to do, and notwithstanding forcibly retains possession.

Defendants answer that they hold the said premises by purchase from Kedaroo Lal, plaintiff's ancestor, and which sale took place in 1238 Fussily for the consideration of rupees 42, and they were duly put in possession; that the bill of sale is lost, but witnesses will prove the sale, and they have incurred certain expence in improving the property, and that this claim for ejectment and exorbitant rent proceeds from enmity.

The moonsiff of Sewan decides in favor of plaintiff, discrediting the oral evidence of defendant, which he considers to be of itself insufficient proof, but, in the absence of any written agreement (fixing the rent at 1 rupee per mensem as claimed,) awards possession and rent at the rate of 6 annas per mensem from 1st Asin 1245, amounting to rupees 35-4 for seven years and ten months, with costs in proportion and interest on amount decreed to date of payment.

It was held in appeal that defendants admit that the disputed premises originally belonged to plaintiff's ancestor Kedaroo Lal, but plead an acquired right by purchase; this being the case, they are bound to prove the transfer by sale. They plead the loss of the deed of sale, but cite witnesses; this is insufficient, for there is a total want of any corroborative proof upon which the court can rely; had the deed been registered, for instance, or attested by the pergunnah cazee, as is usual, this adjunctive proof would have been forthcoming. The testimony of a few interested witnesses alone is deemed under the circumstances insufficient. The defendants' plea of proprietary right, therefore, is not proved. In regard to back rents, I find no evidence adduced by plaintiff of any demand having been made prior to the institution of the suit, and the arbitrary assessment made by the court below at a reduced rate of 6 annas a month is deemed an extra judicial award. The owner of a house is at liberty to fix the rental, and if the tenant objects to pay, he must quit the premises. It is therefore

ORDERED,

That the decree of the lower court be amended, that the award of possession be confirmed, and appellant be liable for rent at the amount claimed (viz., one rupee per mensem) from the date of instituting this suit to date of payment, or date of relinquishment, with all costs of suit.

THE 24TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 14 of 1845.

A Regular Appeal from a decision of the ex-officio Sudder Ameen of Sarun, dated 11th July 1845.

Baboo Jobraj Sing, (Defendant,) Appellant,

versus

Jowahir Sahi, (Plaintiff,) Respondent.

CLAIM, Company's rupees 387, on account of a bond dated 23rd Sawun 1239 Fussily.

The particulars of this suit are recorded in appeal case No. 20 of 1846.

The amount claim is composed of Sicca rupees 181-6-6, principal, with a corresponding amount of interest and Company's rupees 24-3, exchange, making a total of Company's rupees 387. For the reasons given in the above mentioned suit it is

ORDERED.

That this appeal be also dismissed with costs, and the decision of the *ex-officio* sudder ameen be affirmed.

THE 24TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 20 of 1845.

A Regular Appeal from a decision passed by the Principal Sudder Ameen of Sarun, dated 11th July 1845.

Jobraj Sing, (Defendant,) Appellant.

versus

Jowahir Sahoo, (Plaintiff,) Respondent.

CLAIM, Company's rupees 2133-5-4, on account of a bond dated 27th Sawun 1239 Fussily.

On the 26th July 1844 plaintiff instituted this suit, stating that, on the 27th Sawun 1239 Fussily, defendant borrowed Sicca rupees 1,000 from him, agreeing to liquidate the same with interest at 1 per cent. per mensem by the 1st of Bhadoon following. He (the plaintiff) had been absent in Calcutta for some years, but having now returned claims the above sum from defendant with interest, and at the current rates of exchange in Company's rupees.

Defendant answers that 12 years had elapsed, which bars cognizance of the suit, nevertheless he admits the execution of this bond for Sicca rupees 1,000, as well as another on the 23rd idem

for Sicca rupees 181-6-6 in favor of plaintiff, but pleads that the money had been repaid as follows.

On 18th Aghan 1240 by assignment on Bebee Sahazar of Seetulpoor factory,	600	0	0
On 27th Aghan 1240 by assignment on Rogobur Sing,	500	0	0
On 21st Aghan 1240 by cash,	132	15	6

Total Company's rupees 1232 15 6

and that these payments would be proved by his accounts and the evidence of certain witnesses, adding that plaintiff had obtained against him decrees for bonds of a more recent date, from which it was to be inferred that this claim had been previously liquidated.

The principal sudder ameen decided that the claim was cognizable, having been instituted 13 days less than 12 years from the date when the cause of action arose; that defendant's pleas were insufficient, for the entries of payment in his *private* account book could not be regarded as legal proof of payment, and moreover the said entries do not specially refer to this bond; and as defendant admits the execution of the bond he is responsible,—passing a decree for the amount claimed, with costs and interest to date of payment.

JUDGMENT.

It was held in appeal that appellant admits the execution of this bond, pleading that the debt was satisfied the following year. He however produces no receipts, and took no steps to recover the bond, which remained in the hands of respondent until this suit was instituted. The entries of payment in his own *private* account book is no proof whatever; and the witnesses cited are for the most part the servants of appellant, and whose evidence alone in proof of payment is deemed altogether insufficient.

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.

THE 26TH AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 38 of 1844.

A Regular Appeal from a decision passed by the Principal Sudder Ameen of Sarun, dated 23d August 1846.

Balmokoond Sahee, (Plaintiff,) Appellant,

versus

Surubjeet Sing, (Defendant,) Respondent.

CLAIM, Company's rupees 2730, principal and interest, due on a peshgee bond dated 3d January 1841.

The appellant and the vakeel of the respondent having this day presented petitions, stating that the cause of action had been amicably adjusted between the parties, it is accordingly

ORDERED,

That this suit be struck off the file, and the institution fee be returned to appellant under the Circular Orders of the Presidency Sudder Court, No. 5, dated 23d January 1846.

THE 31ST AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 13 of 1845.

A Regular Appeal from a decision passed by Moulvee Mohomed Rufick, Principal Sudder Ameen of Sarun, dated 22d February 1845.

Roopnarain Sing, (Plaintiff,) Appellant,

versus

Surroopnarain Sing, Musst. Rajbunsee Koer, and Purboodeepnarain Sing, (Defendants,) Respondents.

CLAIM, Company's rupees 2,956-4, principal, interest, and exchange on account of half share of cash, decrees of court, and value of tents and gold and silver ornaments, dividing partnership.

It appeared from plaintiff's statement that Surruddown Sing and Inderdown Sing were two brothers, (plaintiff being the son and heir of the former and defendants the heirs of the latter,) who held their property, real and personal, conjointly, but that Inderdown during plaintiff's minority managed the estate. That on plaintiff coming of age rupees 4169 was advanced by Inderdown to Rai Koolwunt Sing, on a farming lease of mouzah Adewah, pergunnah Goah, the half of which advance was paid by Bikaolal, who took a half share, and the remaining half by Inderdown and plaintiff conjointly; that Inderdown with plaintiff's consent subsequently instituted a law suit against the heirs of Rai Koolwunt Sing for the sum of rupees 995, being the consolidated amount balance due, and for which a bond was given dated 30th Asin 1230 Fussily, and on the 9th April 1825 defendants' ancestor obtained a decree against Koolwunt Sing for rupees 1486-15-6 including interest. Plaintiff proceeds to state that, in 1234 F. they separated and divided their household property, but continued otherwise in co-partnership. That plaintiff afterwards sued for his half share in the above decree, in consequence of the heirs of Inderdown refusing to allow him to participate, but which suit, he admits, was dismissed by the district courts, and confirmed by the Sudder De-

wanny Adawlut, on a special appeal dated 11th June 1840—the Court observing that, until plaintiff “had established his co-parcenary right, either by mutual agreement or by suit in court, this claim to participate could not be entertained.” Another suit was instituted *against* him by the heirs of his uncle Inderdown Sing for Company’s rupees 1,000, principal and interest, and which was also finally decreed by the Sudder in appeal in favor of the above heirs on the same date, and in execution of which all plaintiff’s real property was sold. Thus plaintiff now prosecutes to recover his half share of the personal property remaining, including a moiety of the decrees passed in favor of Inderdown and his heirs, and in so doing offers to establish his co-parcenary right as directed by the decree of the head court on the 11th June 1840 quoted.

Defendants answer that the deed executed by Rai Koolwunt Sing in favor of Inderdown Sing, their ancestor, was *after* the separation of plaintiff, and therefore he has no interest therein, and which point has been already decided by the courts of law; that plaintiff was not a minor in 1226 Fussily, but 35 years of age; and that the separation took place on the 25th Asin of that year, and therefore the claim instituted beyond the period of limitation is not now cognizable.

The principal sudder ameen dismisses the suit with costs, considering the claim to be barred by the law of limitation.

JUDGMENT.

After hearing the objections taken by respondent, it was held, on a full consideration of the case, that it was incumbent on the appellant (the plaintiff) to prove his coparcenary right, as directed by the decree of the Sudder Dewanny Adawlut, (11th June 1840,) to entitle him to participate with respondent in the personal property, and especially in the decrees of court which have been passed exclusively in favor of respondents and their ancestors; as in consequence of the absence of such proof the head court have already rejected appellant’s claim to share in the principal decree, a moiety of which he now claims. The only proof at present advanced are the decrees passed in favor of Inderdown Sing and his heirs, and the testimony of four witnesses, but neither do the former judgments, nor the evidence now adduced, establish co-partnership within a period of 12 years antecedent to the institution of this suit. On the other hand the decree of the sudder ameen’s court dated 14th February 1831, and of the Sudder Dewanny Adawlut dated 11th June 1840, distinctly declare the separation of personal property to have taken place in 1226 Fussily, or 1818 A. D., as represented by respondents. This claim therefore must be rejected.

ORDERED,

That the appeal of appellant be dismissed with costs, and the decision of the principal sudder ameen be confirmed.

THE 31ST AUGUST 1846.

PRESENT: H. V. HATHORN, JUDGE.

No. 19 of 1845.

A Regular Appeal from a decision passed by the Principal Sudder Ameen of Sarun, dated 28th June 1845.

Omrao Saho and others, heirs of Rumtawukul Saho, (Plaintiffs,) Appellants,

versus

Musst. Ramzani, mother and guardian of Inaet Hosein, minor son of Bukshish Ali, deceased, (Defendant,) Respondent.

“ THE 17TH AUGUST 1846.

“ CLAIM, for Company's rupees 2,879-5-3, being two-thirds of amount excess sale proceeds, held in deposit on account of the sale of mouzah Jugdeespoor, pergunnah Baul, sold for arrears of revenue.

“ Plaintiffs set forth that Bukshish Ali borrowed Sicca rupees 1,651 from Ramtawukul Saho, their ancestor, and executed a deed of mortgage or conditional sale dated 13th Bhadoon 1215, (19th August 1808,) pledging the entire village Jugdeespoor, his proprietary right, and delivered over possession thereof. That on the 17th Maug 1220, the said Bukshish Ali took a further loan of Sicca rupees 1,000, executing an agreement (*ikrarnamah*) to liquidate the same with the former advance; and again on the 1st Sawun 1223, borrowed other Sicca rupees 1250, and executed a second agreement stipulating to pay the whole amount, including former loans (*viz.* Sicca rupees 3,901,) by the end of Bhadoon 1233 Fussily, failing which the sale was to become absolute. Plaintiffs proceed to state that one third of this village was subsequently decreed to Buktaoolla and Iradut Ali, and that they continued in undisturbed possession of the remaining two thirds. That after the expiration of the stipulated period the mortgagee applied for the foreclosure of his mortgage under the provisions of Section 8, Regulation XVII. of 1806, and the usual notification was issued from the court on the 3rd October 1828, but the mortgager having taken no steps to redeem the property, the mortgage became finally foreclosed and the conditional sale became absolute. That the malicks of Ramapallee (which village is recorded with Jugdeespoor as one estate, but the proprietorship distinct) subsequently fell into arrears, and the whole estate was sold on the 9th Poos 1245, or 21st December 1837, for Company's rupees 9,300. Thus plaintiffs became ousted. That they applied for a reversal of the sale, but to no effect, and now institute this suit for two thirds of the surplus proceeds due to them as successors to Bukshish Ali, the

former recorded proprietor of Jugdeespoor, which proceeds are held under attachment in the collector's office.

"Defendant, the representative of the said Bukshish Ali, resists this claim for three reasons; first, that plaintiffs having instituted no regular suit for possession on foreclosing the mortgage, the claim to excess proceeds as having succeeded to the rights and interests of one of the late proprietors is irregular; secondly, that considering the length of time Ramtawukul held possession before the Government sale for arrears took place, it is clear he must have paid himself in full with interest from the profits of the estate, which the court should first ascertain; and thirdly, that when plaintiffs institute a regular suit as they are bound to do for possession, she, the defendant, will be prepared to answer it.

"The principal sudder ameen decides that until plaintiffs sue to render the sale absolute, they cannot obtain possession under Circular Order 22nd July 1813, and therefore cannot be considered as the late proprietors to whom alone the surplus proceeds are due, and although the estate has been sold for Government arrears they might still sue *pro forma*, and that the supplementary petition filed, to meet this objection and consider this suit (for surplus proceeds) as one to establish their proprietary right, is inadmissible—dismissing the suit with costs.

"Appellants (plaintiffs) appeal in dissatisfaction of this order rejecting their claim, and advance again the various arguments brought forward in their plaint and replication.

"JUDGMENT.

"The point at issue in this case is as follows. Is a mortgagee, who was in possession of an estate when sold for arrears of revenue, the period of redemption having expired, and the sale become absolute, entitled to the surplus proceeds of the Government sale for arrears of revenue as a proprietor, without the institution of a regular suit to establish his proprietary right?

"I am of opinion that the institution of a regular suit for *possession*, under the circumstances, was unnecessary. Such a suit would have been immediately rejected on the ground that the estate, which was primarily hypothecated to Government for the revenue assessed thereon, had been already sold to a third party for arrears. Plaintiffs moreover *were* in actual possession at the time when the estate was sold, and *had been* in undisturbed possession for 29 years previously, (*viz.* from 1215 Fussily, or 1807 A. D., to 1245 F., or 1837 A. D.) The equity of redemption had been foreclosed since 3rd October 1829, a period of 8 years before the revenue sale took place, and the law enacts that if the mortgager 'shall not redeem the property mortgaged within one year from the date of the notification, the mortgage will be finally foreclosed, and the conditional sale will become absolute.'

The institution of a suit therefore was superfluous, for they were *in possession* and *their right was not contested* by the vendor; and having conformed to all the requirements of the law to render the private sale absolute, before the auction sale took place, I consider that plaintiffs are equitably entitled to all the rights and interests accruing to them as defaulting proprietors. These rights are the surplus sale proceeds now under litigation, which 'residue,' the law declares, 'shall belong to the defaulters,' and moreover plaintiffs have adduced in this suit all the requisite proofs that were necessary to entitle them to have their names recorded as proprietors, had no sale for Government arrears taken place.

"In regard to the remaining plea, urged by respondent, viz. that appellants have repaid themselves from the profits of the estate, it is sufficient to observe that from the tenor of the original bill of sale and subsequent deeds, it was evidently intended that the profits were to be enjoyed in lieu of interest only, and that the village would not be redeemable until the principal had been paid in full, and for which a stipulated period was fixed, and had expired. For these reasons it is

"ORDERED,

"That this appeal be admitted and notice be served on respondent."

Read again the grounds above recorded for admitting this appeal, also read the reply of respondent recapitulating former objections taken, and finding no sufficient reason to alter the opinion of this court before expressed on the justice and legality of appellants claim to the surplus proceeds, it is

ORDERED:

That this appeal be decreed, and the decision of the principal sudder ameen dated 28th June 1845 be reversed, and appellants be entitled to the amount of surplus proceeds claimed—the costs of suit in both courts be liquidated by the respondent.

ZILLAH SHAHABAD.

THE 12TH AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

Nos. 12 and 13.

Petitions of Appeal against the decree of the Principal Sudder Ameen.

Ramyand Sing and Ramtuhul Sing, (Defendants,) Appellants,

versus

Meghoo Sing, (Plaintiff,) Respondent.

THIS suit was instituted, on the 25th November 1845, to recover the sum of 1030 rupees, 9 annas, and 9 pie, principal and interest, due on a security bond.

The plaint sets forth that Sheo Burut Sing, the father of the defendants, was in jail on account of a decree had against him by one Musst Jye Kour, when the plaintiff and two sons became his sureties, and effected his release, that after Sheo Burut Sing was released he failed to make good the demand against him, and the consequence was that the property of the plaintiff was sold up to satisfy his portion of the surety bond, viz. 525 rupees, which was paid over to Musst Jye Kour, and completed the realization of her decree, and this suit is instituted to recover this money from the defendants, heirs of Sheo Burut Sing, with the legal interest accruing thereon, amounting in all to 1030 rupees, 9 annas, and 9 pie.

The defendant Ramyand Sing pleads that he was adopted in his childhood by one Raj Roop Sing, and that his brother, Ramtuhul Sing, has succeeded solely to the effects of their deceased father Sheo Burut Sing.

The defendant Ramtuhul Sing pleads, that he alone is responsible for any claims against the estate of Sheo Burut Sing, that this demand was liquidated during the life time of Sheo Burut Sing, and this is a false suit to obtain a second payment.

In his replication the plaintiff denies the payment by Sheo Burut Sing and also the adoption of Ramyand Sing by Raj Roop Sing, because as the eldest son he could not be adopted.

The principal sudder ameen decides that the defendants can produce no proof of the adoption of Ramyand Sing by Raj Roop Sing, and the adoption of the eldest son is opposed to the sashters, and the receipts produced by the defendants to prove payments by Sheo Burut Sing are not valid, first, because in a transaction which has been the subject of a suit in court, involving a sale of property, something more than an every day receipt is required, secondly,

because the dates of the receipts are not named in the defendants' reply, and thirdly, because the stamp paper on which the receipt for 500 rupees is written, was bought by one Roostum Ally, a resident of Saseeram, and nothing to do with either of these parties, and lastly, because the receipt for 37 rupees is on plain paper.

Against this decision both the defendants petition to appeal separately. Ramyand Sing, on the plea that he has proved his adoption by Raj Roop Sing, and Ramtuhul Sing, because he has proved the validity of the receipts produced to prove payment by Sheo Burut Sing.

JUDGMENT.

On an attentive perusal of the evidence produced by the petitioner, Ramyand Sing, in proof of his adoption, I am quite of opinion that it is altogether insufficient: he has no documentary evidence to show, and the oral evidence is incomplete. The adoption of the eldest son, which Ramyand is proved to be, and as such to have performed the duties of primogeniture on the death of his father, is illegal. There can therefore be no reason to admit an appeal as far as he is concerned. With regard to the receipts produced in proof of payment by Sheo Burut Sing, I agree with the principal sudder ameen in considering them invalid on the grounds stated in his decree. I therefore see no reason to admit an appeal on behalf of Ramtuhul Sing. For these reasons both petitions are rejected and the decree upheld.

THE 13TH AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 15.

Petition of Appeal against the decree of the Principal Sudder Ameen.

Sheik Unwuroollah, (Plaintiff,) Appellant,

versus

Musst. Malahut Fatma, Unyat Fatma, and Mahomed Tukkee Khan, (Defendants,) Respondents.

THIS suit was instituted, on the 6th January 1845, to obtain possession of a five annas share of the village of Koosooldehree, with mesne profits for 1250 and 1251 F. S., value, principal and interest, estimated at rupees 2689, 3 annas, 0 pie, 12 krants.

The plaint sets forth that the whole of the village of Koosooldehree was the property of Mahomed Tukkee Khan, and was sold, in satisfaction of his debts and those of Mahomed Syud Khan, the husband of Musst. Mullahut Fatma and the father of Unyat

Fatma, and was purchased by the plaintiff, who completed the purchase, but was prevented by the defendants in taking possession of five annas of the estate. That Musst. Mullahut Fatma for herself and as guardian of Unyat Fatma obtained a decree for a five annas share, as the property of her deceased husband Mahomed Syud Khan, and in that suit the plaintiff was an objector, but his objections were rejected by the court. That Dewan Ramnath Sing and Rajah Maheshur Bux Sing urged objections to the possession of Musst. Mullahut Fatma in other estates of Mahomed Tukkee Khan which were sold, and it was ruled by the Sudder in their case that, since the property had been sold in satisfaction of ancestral debts and the objectors had not been made defendants in the case, their objections should be recognised, and they were declared proprietors to the extent of their purchases, viz. the whole of those estates. That the purchase made by the plaintiffs was exactly similar to those made by the above parties, and that having failed in obtaining possession through the objections made in the suit of the lady defendants against Mahomed Tukkee Khan, this regular suit is instituted with the expectation that the decree of the Sudder in favor of Dewan Ramnath Singh and the rajah may rule the decision in this case.

The lady defendants reply that when the village of Koosooldehree was sold, the sale extended only to the rights and interest of Mahomed Tukkee Khan, and the deed of sale was drawn out in these terms, and on their instituting a suit to establish their right to succeed Mahomed Syud Khan, it was ruled that eleven annas was the share of Tukkee Khan, and the remaining five annas was decreed to them, and that decree is final, which at once refutes the declaration of the plaintiff, that he purchased the whole sixteen annas of the estate, that they were not aware of this purchase at the time they instituted their suit, or they would have made the plaintiff a party in it, and that neither this village nor any others were sold in satisfaction of ancestral debts, and that the decree of Ramnath Sing is no precedent for this case.

Mahomed Tukkee Khan makes no defence.

The principal sudder ameen decides that it is on evidence that Musst. Mullahut Fatma and Unyat Fatma's rights and interests to a five anna share in the village of Koosooldehree, was decreed to them by his court on the 24th December 1842, in a suit instituted by them, as the heirs of Mahomed Syud Khan; and that prior to this decree the rights and interests of Mahomed Tukkee Khan were sold in satisfaction of a decree had against him by one Salig Ram, and were bought by the plaintiff, who thus became proprietor of eleven annas, and was prevented by the lady defendants in getting possession of the remaining five annas. The plaintiff sues for possession in these five annas, because the sale effected

was for ancestral responsibilities, whereas it was decided by the court on the 24th December 1845, that the village was sold in satisfaction of a decree had against Mahomed Tukkee Khan for his individual and private debts, and that the rights of Mahomed Syud Khan in the village were not involved in that sale. The judge's order for a re-investigation of that decision directs this court to consider whether, with reference to the Sudder's decree dated 10th December 1844, the sale proceeds of this village had been expended in satisfaction of the debts of Mahomed Tukkee Khan, or in liquidation of the joint debts and ancestral responsibilities of Mahomed Tukkee Khan and Mahomed Syud Khan. The roobookarry of sale dated 13th June 1842, and the roobookarree of the additional principal sudder ameen dated 25th January 1838, and the decree of this court dated 9th January 1836, and the abstract statement of the distribution of sale proceeds dated 6th April 1843, prove that the rights and interests of Mahomed Tukkee Khan in the village of Koosooldehree were sold in satisfaction of the debts of Mahomed Tukkee Khan alone, on the suit of Salig Ram Sing, and the surplus proceeds after satisfying this claim were aggregated with the sale proceeds from other estates, and paid away in liquidation of other claims. The decree of the Sudder Dewanny, giving possession to other purchasers of other portions of Tukkee Mahomed's estate, is based on the fact of those portions having been sold in satisfaction of the joint debts and ancestral responsibilities of Mahomed Tukkee Khan and Mahomed Syud Khan. In this case, altho' the surplus sale proceeds of the village of Koosooldehree were expended in liquidation of joint debts, yet since it was sold only in satisfaction of the debts of Mahomed Tukkee Khan, the plaintiff is entitled to possession only to the extent of the rights and interests of that individual, and this suit is therefore dismissed.

The plaintiff in his petition of appeal attempts to gainsay these arguments, and to show that the order of the Sudder dated 10th December 1844, ought to secure the reversal of this decree.

JUDGMENT.

I consider the principal sudder ameen's present investigation in this case to be complete, and his decree a very just one. Mahomed Tukkee Khan and Mahomed Syud Khan were brothers and joint proprietors of extensive property. On the death of Mahomed Syud Khan, his wife and daughter Musst. Mulahut Fatma and Musst. Unyat Fatma, defendants in this case, obtained a decree against Mahomed Tukkee Khan for a five annas share in this joint property. Several portions of their property were sold, either in satisfaction of the joint responsibilities of Mahomed Tukkee Khan and Mahomed Syud Khan, or for their separate and individual debts. In the case before the Sudder, the purchasers of

certain villages were declared to have purchased the *whole* of these villages, because they had been sold in satisfaction of the joint debts and ancestral responsibilities of Mahomed Tukkee Khan and Mahomed Syud Khan. Now in the present case it is clearly proved that the village of Koosooldehree was sold in satisfaction of a debt incurred by Mahomed Tukkee Khan *alone*, and the sale roobooocarree shows that the property sold was simply the rights and interests of Mahomed Tukkee Khan, and as such was purchased by the plaintiff. The rights and interests of Mahomed Syud Khan, and after him of Musst. Mulahut Fatma and Musst. Unyat Fatma, were not involved in this sale, and were not therefore purchased by the plaintiff: he only purchased eleven annas of the village in question, the rights of these ladies to five annas having been established by a decree of court. The case before the Sudder was different to this: *there* joint properties had been sold in satisfaction of joint debts, *here* the village was sold to meet the responsibility of only one party, and the rights and interests in the village of that party only was purchased by the plaintiff: he has no title whatever to extend his purchase over the whole of the village. For these reasons I confirm the decree of the lower court, and reject the petition of appeal.

THE 13TH AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 16.

Petition of Appeal against the decree of the Principal Sudder Ameen.

Musst. Mulahut Fatma and Musst. Unyat Fatma, (Defendants,) Appellants,
versus

Sheikh Gholam Ally, (Plaintiff,) Respondent.

THIS suit was instituted, on the 7th January 1845, to obtain possession of five annas of the village of Shahadut Dehrah, with mesne profits for 1250 and 1251 F. S., value, principal and interest, estimated at 345 rupees, 7 annas, 9 pic, 12 krants.

This suit was first instituted in the sudder ameen's court, but being similar in all respects to No. 15 just disposed of, it was transferred to the file of the principal sudder ameen.

Here we have the same grounds of action, the same reply thereto, and a decree in favor of plaintiff, because it is satisfactorily proved that this village was sold for the joint debts and ancestral responsibilities of Mahomed Tukkee Khan and Mahomed Syud Khan, and therefore the plaintiff purchased the whole of the village,

and not simply eleven annas as the defendants attempt to show. The petition for appeal on the part of Musst. Mulahut Fatma and Musst. Unyat Fatma, is merely a reiteration of their reply in the first instance, and in it no new points of defence are raised. This case was returned to the principal sudder ameen with directions that he should ascertain the mesne profits through an ameen, which had been omitted.

JUDGMENT.

The principal sudder ameen's present investigation is complete, and his decree a just one, since the decision of the Sudder dated 10th December 1844, is fully applicable. This village was sold for joint debts, and the appellants' rights and interests were thereby extinguished, and the plaintiff's purchase extended to the whole village. I therefore reject the petition of appeal, and confirm the decree of the lower court.

THE 13TH AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 18.

Petition of Appeal against the decree of the Principal Sudder Ameen.

Sheik Emaum Bux, (Defendant,) Appellant,

In the case of Musst. Nujeeban, guardian of her son Meer Kassim Ally, a minor, (Plaintiff,) Respondent,

versus

Sahib Jadah Sing, Sheikh Emaum Bux, Meer Nassir Ally, Chundow and Musst. Wazeerun.

THIS suit was instituted, on the 26th December 1845, to reverse a sale and recover possession of a third share in a third share of mouza Jelalpoor, and mesne profits for 1252 and 1253 F. S., the suit laid at 1,051 rupees.

The plaint sets forth that the plaintiff, Musst. Nujeeban, purchased, under a deed of sale in favor of her son Meer Kassim Ally, dated 17th February 1843, the whole of the village of Nemeeah for 1,100 rupees, a third share in the village of Bendeeroopeah for 500 rupees, and a third share in a third share of the village of Jelalpoor for 400 rupees, from Mahumdee Beebee, the daughter of Ally Ibrahim, and wife of Syud Jemal Ally; that she got possession and had her son's name recorded as proprietor in the collector's register; that subsequent to this purchase Sheik Bahadoor Ally and other

plaintiffs entered this property in their taleeka as the property of Mahumdee Beebee, which was released on the objections of the plaintiff; that this was repeated again in the taleeka of one Dureao Sing, and was again released on the plaintiff's objections; but that on a third occasion, when a third share of a third share of Jelalpoor was entered in the taleeka of Sheikh Emaum Bux (a defendant in this case) as the property of Mahumdee Beebee, at the court of the moonsiff of Saseeram, the plaintiff's objections were not recognised, and the property was sold and purchased by Sahab Jada Sing the defendant; that the rights and interests of Mahumdee Beebee in Jelalpoor are vested by purchase in the plaintiff; and this suit is instituted to reverse the sale and recover possession, with mesne profits for 1252 and 1253 F. S., the period of dispossession.

The defendant Emaum Bux replies that the plaintiff is a pauper, and quite unable to supply money to effect this purchase, that it is a pretence got up to defraud the creditors of Mahumdee Beebee, that the objections urged by the plaintiff at the time he entered this property in the taleeka as belonging to Mahumdee Beebee were thrown out, and that the plaintiff was the kept mistress of Syud Jumal Ally, that his pecuniary transactions were with Mehtab Beebee and Mahumdee Beebee, the heirs of Ally Ibrahim, and this is an attempt to defraud their legal creditors.

The reply of Sahab Jada Sing is to the same effect, and declares that there was no irregularity to vitiate the sale, and that the property said to have been sold is still in the possession of Mahumdee Beebee.

The other defendants did not appear to defend the suit.

The principal sudder ameen decides that the deed of sale is registered, and that the defendants produce no proof to affect its validity, and tho' the witnesses produced by Sahib Jada Sing depose that the property is still in possession of Mahumdee Beebee, yet this is not enough to gainsay the assertions of the plaintiff's witnesses that such is not the case. On two former occasions the possession of the plaintiff was proved by the property having been released from sale on her objections.

It is therefore evident that this property was disposed of prior to this sale, and the sale is therefore null and void. The mesne profits are not proved to be of the value stated in the plaint. The evidence of the defendant's witnesses shows that to have been 70 or 75 rupees annually; therefore, after deducting the Government revenue and 10 per cent. as expences of collections, a decree is passed in favor of the plaintiff for possession, and mesne profits, amounting to 94 rupees for the two years of dispossession.

Against this decree Sheik Emaum Bux defendant petitions for appeal: he attempts to gainsay the above arguments by reiterating the pleas recorded in his reply to the plaint.

JUDGMENT.

I see no reason to admit an appeal in this case. The deed of sale for the share in these three villages has released the property from sale on two occasions; and it would certainly have been equally successful on the third occasion had the plaintiff urged her objections in proper time. The power of Mahumdee Beebee to alienate the property in question is not disputed, and there is ample evidence of her having sold it to the plaintiff prior to its being inserted in the taleeka of the appellant: for these reasons I agree with the principal sudder ameen that this sale ought to be set aside, and possession given to plaintiff with the amount of mesne profits fixed by the lower court. The petition of appeal is therefore rejected and the decree upheld.

THE 19TH AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 18.

Appeal against the decree of the Sudder Ameen.

Degumber Sing and Salig Ram Sing, (Plaintiffs,) Appellants,
versus

Khajeh Mahomed Mehndee and Ujageer Sing, (Defendants,) Respondents.

THIS suit was instituted, on the 19th January 1846, to recover the amount of a decree, principal and interest, amounting to rupees 356-12-11.

The plaint sets forth that Khajeh Mahomed Mehndee gave a lease of 21 beegahs, 15 cottahs of aymah land to the plaintiffs; and on their attempting to take possession they were hindered and prevented by Ujageer Sing, when a dispute arose, which Ujageer Sing made the subject of a suit in court and obtained a decree for rupees 324-0-9 against the plaintiffs and Khajeh Mahomed Mehndee; that the plaintiffs paid rupees 216-3 on account of this decree, and since this expence was caused by the Khajeh and he refuses to pay it, this suit is instituted to recover that sum with interest thereon making a total of rupees 356-12-11.

The defendant Khajeh Mahomed Mehndee replies, that this land was ruled as a rent free tenure to him under Regulation II. of 1819, and the plaintiffs took a lease of it at their own free will, and are therefore responsible for the consequences: if they have been dispossessed by Ujageer Sing, their remedy is against him, and that his own right to possession has been recognized by all the courts.

Ujageer Sing replies that the institution of this suit is opposed to Regulation III. of 1793, and that Khajeh Mehndee is the responsible person.

The sudder ameen decides that the suit is groundless and opposed to Regulation III. of 1793; that since Ujageer Sing got a decree against the plaintiffs, no suit will lay against him; and the decree of Ujageer Sing contains no order for the plaintiffs to seek a remedy against Khajeh Mahomed Mehndee. The case is therefore dismissed, and the plaintiffs fined 100 rupees for instituting an illegal, litigious, and groundless suit.

Against this decree the plaintiffs appeal, firstly, because the introduction of Ujageer Sing's name as defendant was more for the purpose of elucidating the case, than with the expectation of obtaining a decree against him, and secondly, because they do not consider that they have made themselves obnoxious to a fine.

JUDGMENT.

I agree with the sudder ameen in his finding in this case. The dispute which is the origin of this suit was adjudicated in the case of Ujageer Sing *versus* the plaintiffs and Khajeh Mahomed Mehndee, when the latter party were declared to be jointly responsible for the damages their arrangement entailed on Ujageer Sing. I consider that the institution of this suit was opposed to Regulation III. of 1793, and the imposition of the fine is quite applicable to the case. I therefore confirm the decree in all particulars, and saddle the appellants with all expenses, and fine them another hundred rupees for a litigious and vexatious appeal.

THE 27TH AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 138.

Petition of Appeal against the decree of the Sudder Ameen Moon-siff of Arrah.

Thakoor Dutt Roy, (Plaintiff,) Appellant,

versus

Bhyroo Panday and Isree Panday, (Defendants,) Respondents.

THIS suit was instituted, on the 26th December 1845, to recover a bond debt amounting, principal and interest, to rupees 186, 1 anna.

The plaint sets forth that a balance of 100 rupees was due from the defendants on mercantile dealings with the plaintiff, for which they gave a bond dated 29th Maugh 1246 F. S., and in which they agreed to make good this amount by the full moon of Jeyt 1246 F. S., and pledged 15 beegahs of cultivation as security; that the defendants having failed to pay, this suit is

instituted to recover the debt with interest thereon, amounting to rupees 186-1.

Bhyroo Panday denies the transaction, and pleads that he and Isree Panday sold a joint cultivation to one Kunhya Sing, and, on his refusing to comply with an unreasonable demand of Isree Panday, on their dividing the sale proceeds, Isree Panday instigated Dindeal Sing, the son of the plaintiff, to institute this false suit, and that since 1242 the plaintiff has been a prisoner in the jail.

Isree Panday also denies the transaction, and declares that the plaintiff has been in jail since 1242 F. S., and that, if this bond was a *bond fide* transaction, Dindeal Sing, the plaintiff's son, and other residents of the village must be cognizant of it, and that he is ready to abide by the oaths of Dindeal and Kalee Churn, the sons of the plaintiff.

The moonsiff decides that the suit is a false one, although the witnesses to the bond confirm the declaration of the plaintiff, and that since the plaintiff has failed to comply with the requisition of his court dated 18th March 1846, to produce Dindeal Sing, the suit is dismissed.

In the petition of appeal the plaintiff attempts to prove that the case ought to be decided without reference to Dindeal Sing, as he was not named as a witness in the suit. On the requisition of this court, the plaintiff produces Dindeal Sing.

JUDGMENT.

The moonsiff gives no reason for his opinion that this suit is a false one, and he admits that the evidence of the witnesses to the bond confirms the declaration of the plaintiff. The appellant has caused the attendance of Dindeal Sing before this court, who now declares his readiness to give evidence in the case; and as I consider the moonsiff's present investigation to be unsatisfactory and incomplete, and can see no ground for his supposition that the suit is a false one, I admit the appeal, reverse the decree, and return the case for re-investigation with reference to the above remarks. The usual order is passed for the return of the amount of stamp.

THE 28TH AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 133.

Appeal against the decree of the Sudder Ameen Moonsiff of Arrah.

Musst. Sohawun, (Defendant,) Appellant,
versus

Soudagur Roy, (Plaintiff,) Respondent.

Mohit Roy, Objector.

THIS suit was instituted, on the 22d September 1845, to recover the sum of 103 rupees, amount principal and interest of an advance on a lease.

The plaint sets forth that the defendant, the wife of Soodasheo Sing deceased, held four beegahs of land in the village of Singahce on a lease from Chowdree Maheeput Narain, which she leased to the plaintiff at an annual jumma of 4 rupees, taking 100 rupees in advance, and signed a bond drawn out in the name of the plaintiff's son, a minor; that when the plaintiff went to cultivate the land, Mohit Roy, the brother of the defendant's husband, brought a charge of plunder against him and others, and the defendant preferred a counter charge of a similar nature against Mohit Roy, and whilst the charges were under investigation before the criminal court the defendant entered a petition denying the truth of her counter charge, and also that she ever gave a lease of the land in dispute to the plaintiff.

The magistrate ruled the possession of the land to Mohit Roy under Act IV., by which the plaintiff was dispossessed; and this suit is instituted to recover the sum advanced to the defendant with the legal interest thereon.

The defendant pleads the general issue, and declares she never had any land to let and that the bond has been forged by a third party.

The sudder ameen decides that the validity of the bond is established by the evidence of the plaintiff's witnesses, and is confirmed by the petition of Mohit Roy; and as the plaintiff did not attempt to set aside the magistrate's order by which he was dispossessed, he is entitled to a decree for the money he advanced to the defendant.

The petition of the appellant is an attempt to gainsay the arguments of the moonsiff and to reverse the decree.

JUDGMENT.

The validity of the bond is proved by sufficient evidence, and the bond contains a provision for the contingency which has arisen, viz. that in the event of the plaintiff being disturbed in the possession of the four beegahs, he must look to the appellant for satisfaction. The magistrate's award under Act IV. did disturb this possession and give the land to Mohit Roy. If this lease was not entered into between the plaintiff and the appellant, what was the cause of Mohit Roy's complaint under Act IV.? For these reasons I confirm the decree of the lower court, with all expences on the appellant.

THE 28TH AUGUST 1846. /

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 141 of 1846.

Appeal against the decree of the Sudder Ameen Moonsiff of Arrah.

Sheopersaud Sing, (Defendant,) Appellant, in the case of Ramasurdeal, (Plaintiff,) Respondent,

versus

Sheopersaud Sing and Jankee Ram, (Defendants.)

THIS suit was instituted, on the 5th December 1845, to recover a deposit amounting, principal and interest, to 30-14-10.

The plaint sets forth that the plaintiff in the presence of respectable witnesses deposited the sum of 26 rupees with the defendants, to meet the payment of a fine imposed on the plaintiff by the criminal court.

That in Kartick 1252, the defendant Jankee Ram returned 3 rupees, and this suit is instituted to recover the balance of the deposit amounting, principal and interest, to 30-14-10.

The defendants deny the transaction and plead the general issue.

The moonsiff decides that the evidence of the plaintiff's witnesses proves the deposit to have been made with Sheopersaud Sing, and that Jankee Ram was not concerned in the transaction: a decree is therefore passed against Sheopersaud Sing.

Against this decree Sheopersaud Sing appeals, principally on the ground that if Jankee Ram is exempted from responsibility he ought to be so too.

JUDGMENT.

In my opinion oral evidence is not sufficient to prove this transaction, it requires a document of some kind. The plaint sets forth that the money was deposited with *both* the defendants, whereas the evidence of the witnesses show that the deposit was not made with Jankee Ram at all: this takes away all appearance of truth from the plaintiff's declaration. I therefore reverse this decree and dismiss the case with all costs on the plaintiffs.

THE 31ST AUGUST 1846.

PRESENT: W. ST. QUINTIN, OFFICIATING JUDGE.

No. 142.

Appeal against the decree of the Moonsiff of Dhungyn.

Lotun Roy, Doohmun Roy, and Baluk Roy, (Plaintiffs,) Appellants,

versus

Dowul Pandee, (Defendant,) Respondent.

THIS suit was instituted, on the 19th May 1845, to confirm possession in 40 beegahs of land in the village of Alawalpoor valued at 280 rupees.

The declaration of the plaintiffs is, that they are the proprietors of the village of Alawalpoor, and the adjoining village of Davee Deeree belongs to the defendant, that the boundary between these villages is marked by a continuous ridge running north and south. To the eastward of this ridge is the land of Alawalpoor and on the western side the lands of Davee Deeree. That according to the measurement of an ameen in 1243 F. S., the rukbah of Alawalpoor was 226 b., 15 c., 10 d., and that of Davee Deeree 365 b., 12 b., and both villages were settled with the plaintiffs. That subsequently Davee Deeree was sold at auction to the defendants, and both parties had possession according to their respective boundaries. That in 1248 F. S., at the request of the defendant, an ameen was appointed by the khas mehal department to mark off the boundary of Davee Deeree, and he, in collusion with the defendant and in the face of the measurement papers of 1230 F. S., and the maps of 1240 and 1243 F. S., included 40 beegahs of the land of Alawalpoor in the boundary of Davee Deeree. That this 40 beegahs is now, and has all along been in the possession of the plaintiffs. That in 1252 F. S., the officers of the professional survey also included this land in the hulkah of Davee Deeree. That the burr tree which the ameen declared to exist on the eastern side of the boundary ridge, does not appear in the settlement papers; and that the burr tree exhibited in the measurement map of 1230 has fallen down. That the settlement papers show that the southern boundary of Alawalpoor unites with the village of Nagpoor, and the nullah Darmootee on the boundary of Cheinpoor; and now according to the map of the survey, the southern boundary of Alawalpoor does not extend as far as the nullah of Darmootee: the boundary laid down by the survey is therefore incorrect.

The defendant replies that not a beegah of Alawalpoor was included within the confines of Davee Deeree, that this land claimed by the plaintiffs has always been in the possession of the defendant, that the plaintiffs made no appeal against the orders of the khas mehal officer, that these two villages were wyranah attached to Nagpoor and were separated and settled with the plaintiffs' ancestors, that Davee Deeree came into the possession of the defendant by purchase, that, according to the statement of the ameen in 1230 F. S., the eastern boundary of Davee Deeree was defined by a continuous ridge running north and south, on which is a burr tree near the western corner of the north of Darmootee, and on the eastern side of this ridge is the land of the plaintiffs' village. Lotun Roy plaintiff admitted that this ridge was the boundary between the villages, and even paid a portion of the expenses to keep the ridge up. That formerly the plaintiffs had a boundary dispute about Davee Deeree with the proprietors of the adjoining estate, when arbitrators were appointed by the criminal court and on the agreement of both parties, who decided that this ridge with the

burr tree on it was the boundary between the villages; and if this award was unjust, why were the plaintiffs satisfied with it? This took place in 1236 F. S., and it was in conformity to this award that the survey laid down the boundary. The villages of Nagpoor and Alawalpoor both belong to the plaintiffs; and when the survey took place, the plaintiffs had part of the rukbah of Alawalpoor included in that of Nagpoor, and they now make an attempt to complete the rukbah of Alawalpoor by abstracting from the land of Davee Decree.

The moonsiff decides that both parties are agreed as to the rukbah of these two villages, but not as regards the boundary. The plaintiff declares there is no burr tree and the defendants that a burr tree does mark the boundary. The papers of the ameen appointed by this court to measure Davee Decree shows its rukbah according to the boundary pointed out by plaintiffs to be 318 beegahs, 11 cottahs, 15½ dhoores, leaving 28 beegahs, 13 cottahs, 9½ dhoores, disputed land according to the boundary pointed out by the defendant, making the rukbah to be 347-10-15, or less by 18-1-15 of the rukbah, according to the former settlement measurement. It is therefore evident, that the boundary pointed out by the plaintiffs is incorrect. The village of Davee Decree was settled at a rukbah of 365-12 without dispute. The boundary declared by the defendant is the same as that which was defined by arbitration and agreed to by the plaintiffs, and the plaintiffs' suit is therefore groundless, and is dismissed.

Against this decree the plaintiffs appeal and ask for a measurement of Alawalpoor, &c.

JUDGMENT.

I consider the moonsiff's decree in this case to be correct. It is clearly proved, that the continuous ridge running north and south with the burr tree on the eastern side of it, has always been recognized as the boundary between the two villages. There can be no occasion to measure the plaintiffs' village of Alawalpoor: the measurement of Davee Decree is quite sufficient for the ends of justice. The plaintiffs admit that Davee Decree was measured and settled with them at a rukbah of 365 bgs., 12 c., and the present measurement according to their definition of the boundary, shows a deficiency of 47 bgs., 0 c., 14¼d. in that amount of rukbah. For these reasons I confirm the moonsiff's decree, with all costs on the appellants.

ZILLAH SYLHET.

THE 19TH AUGUST 1846.

PRESENT : H. STAINFORTH, JUDGE.

No. 3 of 1845.

Appeal from Sirinath Bidia Bhagish, late Sudder Ameen.

Mahomud Kuleem and others, Appellants,

versus

Neerush Bebee, widow of Lall Mahomud, Respondent.

RESPONDENT declared $\frac{1}{4}$ th of certain assessed and unassessed estates to have been the property of her late husband, while $\frac{3}{4}$ ths belonged to Mahomud Ufzul, Mahomud Abid, and appellants : that as she was a secluded woman, unable to manage scattered property, her husband gave her, under a deed of gift, dated 28th Magh 1228, land in a few villages in proportion to one-sixteenth of the whole of the estates with two homesteads, and placed her in possession according to a chittah or descriptive roll : that she went to Mecca, on the 12th Phalgun 1242, leaving Mahomud Ufzul in charge of her property : and that, on her return, on the 27th Bhadoon 1244, his heirs, and appellants, and others, held it, and would not relinquish it ; and she therefore sued for possession of the land with mesne profits.

Appellant answered, denying the declaration in the plaint, and alleging, in substance, that previously to the separation of their uncle, respondent's husband, from messing with his three brothers, the family possessed only the single talooka Ashuk Khuleel : that their other talookas were subsequently bought by appellants and their co-messing partners : that the rent free lands of mouza Shunkerpoor, included in the alleged deed of gift, were purchased after its date ; and that the suit is barred by the law of limitation.

Mahomud Unsur, son of Mahomud Ufzul, brother of appellants, filed an answer admitting the deed of gift, but alleging that his father purchased the land alienated by it, from respondent, on the occasion of her departure for Mecca.

The sudder ameen, deeming the deed of gift in favor of respondent authentic, her possession indubitable, and her claim just, but having failed to obtain, through the ameen deputed to make a local investigation of the case, proof of seizin of the specific lands which she asserts herself to have possessed, gave her a decree for a share of the villages in which she was donee, in proportion to the

jumma appropriated to her in the deed of gift; providing that a proportionate share of the price of mouzas Shunkerpoor and Kamarkhaye, which are among those villages, and in which respondent appeared to have held possession, but which, nevertheless, seemed to have been purchased subsequently to the execution of the said deed, should be paid for by respondent, by an equivalent sum being deducted from the mesne profits receivable from her opponents, the amount of which was to be rendered determinate at the time of execution of the decree.

Appellants now plead that the decree of the sudder ameen is not in conformity with respondent's claim: that the deed of gift is not specific, and therefore void: that respondent's possession of the lands claimed is not proved by the evidence of the witnesses adduced in court on the local enquiry, while their (appellants') long adverse possession is fully established: that respondent has been allowed a share of the lakheraj land in mouza Shunkerpoor, though it was proved to have been bought after the date of the deed of gift: that the sons of Mahomud Ufzul are colluding with respondent: that Mahomud Ufzul's evidence attesting the deed of gift, in the suit instituted in 1234 B. S., claiming Musumut Khytur as a slave, was given from enmity: and that as they (appellants) were not parties to the said suit, or cognizant of its institution, they cannot be affected by it.

The sudder ameen has most strangely supposed both that the lands in Shunkerpoor and Kamarkhaye were purchased after the date of the deed of sale, though included in it, and also that the deed of gift is an authentic document—not considering that the two suppositions are utterly incompatible, and that the former is absolutely destructive of the latter; and he has given a decree for what is not claimed, for possession of *portions of villages, with defined boundaries*, is claimed, while possession of a *proportionate share of those villages without any regard to boundaries* is decreed. Such a decree, obviously, cannot be upheld.

The objections advanced by appellants relative to alleged lapse of time in suing, want of specification in the deed of gift, the acquisition of some of the lands included in it subsequently to the date of its execution, and all such defects and inconsistencies, real or imaginary, must be held cured and reconciled, if it be proved that respondent was, as she asserts, in possession under the deed of gift, of the lands claimed by her from 1228 to 1242: in such case the authenticity of the deed of gift, and appellants' consent to it, will be presumed, and respondent's claim deemed to be duly and fully established.

But the question of possession does not appear to me to have received the careful investigation which it requires. Possession by respondent is sworn to by several witnesses, whose evidence, with reference to the circumstances of the case, appears to me extremely

probable; but they have been unable to detail the boundaries, and their evidence is therefore inconclusive. Under these circumstances, I am of opinion that a further local investigation is necessary: that an ameen should, if possible, be selected, who will act impartially, and who has ability to detect and expose any confederacy which may exist against respondent: that he should be furnished with a copy of the plaint and of the chitta: be directed to ascertain, from respondent's agent, the precise locality of each parcel of the land claimed: compare its boundaries with those in the chitta: and ascertain, on the spot, from the evidence of the parties, and of disinterested persons cognizant of the facts, who held possession from 1228 to 1242. With this view of the case, it is necessary to remand it, and as the office of sudder ameen of Sylhet is abolished,

IT IS ORDERED,

That the decree of the sudder ameen be reversed, and that the suit be transferred, for re-investigation and decision, to the court of the principal sudder ameen, who, in his decree, will provide for all the costs of this appeal, saving the price of the stamp on which the petition of appeal is written, which will be returned.

THE 19TH AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 8 of 1846.

Appeal from the late Mr. Bird, Moonsiff of Lushkurpoor.

Sheikh Dunna and others, Appellants,

versus

Manick Ram Deb, Respondent.

APPELLANTS sued to recover, with penalty, 15 rupees, extorted from them with aid of a peada, taken out under Regulation VII. 1799, notwithstanding that they cultivated no land belonging to respondent.

Respondent admitted having taken out process under the Regulation quoted, on claim of 4 rupees, 7 annas, rent for 1250, which he realized with 1 rupee, 12 annas expenses.

The moonsiff, on the grounds of discrepancies in the evidence, of the exaction of 15 rupees not being clearly made out, and of appellants having suffered six weeks to elapse without adducing their remaining witnesses, dismissed the suit.

Appellants now allege that their claim is proved by the evidence on record, with other matters.

It appears to me fully proved, by the evidence on record, and the proceedings in the suit under Act IV. of 1840, that respondent is in possession of the land on account of which the rent was re-

lized, and it is also in my judgment satisfactorily proved by appellants' witnesses, supported as they are by the omission, in the receipt given by respondent, of the sum received by him, that he exacted the sum of 15 rupees when only entitled to rupees 6-3, including expences. Under these circumstances I am of opinion that appellants are entitled to recover the difference, with an equal sum as penalty,

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and that appellants do recover from respondent 8-13, with an equal sum as penalty, together with costs in both courts, in proportion to the amount decreed, with interest from the date of the moonsiff's decree to the date of realization. Respondent's expences being his own loss.

THE 21ST AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 9 of 1845.

Appeal from Nuzeroodeen Mahomud, Officiating Sudder Ameen.

Israil Allee and others, Appellants,

versus

Mahomud Wazeer and others, Respondents.

RESPONDENTS, the former proprietors of talooka Mahomud Nowaz, alleged in their plaint that Mahomud Ameer, who had bought the said talooka at auction, sold $\frac{6}{8}$ ths of it to them before they had relinquished possession, on the 21st Kartik 1245, under a deed of sale in the name of Mahomud Rasheed; and that appellants, colluding with the auction purchaser, had dispossessed them, of part through aid of an ameen deputed by the civil court, and of the remainder, in 1248, through two suits in the criminal court; and they accordingly sued for possession with mesne profits.

Mahomud Allee, son-in-law of the auction purchaser, filed an answer denying the purchase and consequent possession of respondents, and alleging that the auction purchaser sold $\frac{5}{8}$ ths of the talooka to Unwar Allee, brother of Noor Allee, who again sold $\frac{1}{8}$ th to Israil Allee, and that on the 21st Sawun 1250, the auction purchaser sold the remaining $\frac{1}{8}$ th to him, the defendant, and his nephew Mahomud Shurreef, delivering possession; with other matters.

Noor Allee, Israil Allee, and Azera Beebe, filed an answer in conformity with that of Mahomed Allee; Ayasa Beebee disclaiming any concern in the land under litigation.

The officiating sudder ameen, on the grounds recorded by him, gave a decree against certain of the defendants, providing, among

other matters, that the amount of mesne profits payable to respondents should be settled at the time of the execution of the decree; and he subsequently held a proceeding declaring that Mahomud Shurreef had been inadvertently recorded as liable under the decree, instead of his mother Firman Bebee.

Appellants now allege that their defence is proved: they take exception to the inclusion and subsequent exclusion from the decree of Mahomud Shurreef: impugn, as fraudulently recorded, the deposition of Mahomud Ameer, the seller, before the foudaree court: assert that the seller, not being seized of the property, could not sell it: declare the deed of sale to Mahomud Alee to deserve preference in consequence of registration: and urge that had the sale to respondents been true, the latter would never have attempted to effect assessment of the khannah baree lands of the talooka; with other immaterial matter.

But in 1247 B. S., before the purchase by Mahomud Alee in 1250, the auction purchaser himself admitted the sale to respondents, in his statement before the magistrate, which does not appear to me to indicate fraud on the part of respondents, as their purchase is, in the same statement, attempted to be invalidated. Moreover it is attested by evidence of Surroop Chund Dut and Ram, Shurun, witnesses examined in the suit brought to reverse the auction sale in which the auction purchaser and Mahomud Alee, appellant, were defendants, and of Russool Buksh, witness in the present suit, all three having witnessed execution of the deed of sale to respondents in the name of the late Mahomud Rasheed; and, on these grounds, I unhesitatingly pronounce the purchase by respondents to be a *bona fide* transaction. Moreover seizin of the seller does not appear from Macnaghten's "Principles and Precedents of Mahomedan Law" to be indispensable in a transaction of sale; and, under the law, a registered deed does not supersede a *bona fide* deed not registered; nor can the attempt, by respondents, to effect assessment of the khannah baree lands, however fraudulent as an endeavour to hold exclusive possession of them, be held to cast suspicion on their purchase; and as the purchase by Mahomud Alee, in 1250 B. S., took place subsequently to the purchase, in 1245, of respondents, now upheld, and the purchase, in 1246, by Unwar Alee, which is not disputed, it appears to me just to give respondents possession from the share purchased by the said Mahomud Alee, with mesne profits, calculated on the unimpugned estimate made by the ameen deputed for the purpose, payable by Mahomud Ameer the auction purchaser, as well as Mahomud Alee, Israil Alee, Noor Alee, brother, and Huleema Bebee, widow of Unwar Alee, who aided in dispossessing respondents, and to absolve Ayesa Bebee and Mahomud Shurreef, the minor, from personal responsibility under this decree.

IT IS THEREFORE ORDERED,

That the decree of the officiating sudder ameen be amended: that respondents be put in possession of the $\frac{5}{16}$ ths of the talooka purchased by them, the same being taken from the $\frac{1}{16}$ ths purchased by Mahomed Alee: that they be entitled to recover mesne profits (aggregating, up to the date of this decree, rupees 185-6-4,) with interest, calculated in the usual way from the date of suit (the time for which it is prayed for) to the date of realization, with their costs in proportion to the value of the property decreed, with interest to the time of realization from Mahomud Ameer, Mahomud Alee, Noor Alee, Israil Alee, and Huleema Bebee; appellants' expenses being their own loss, and Ayesa Bebee and Mahomud Shurreef being discharged from personal liability under this decree.

THE 29TH AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 10 of 1846.

Appeal from Nuzeroodeen Mahomud, Officiating Sudder Ameen.

Ruttun Bullub Das, Appellant,

versus

Kumlakant Surinah, Respondent.

APPELLANT sued, on the 11th Bysakh 1252 B. S., for rupees 524-6-8, as the balance, principal and interest, due under a bond dated 24th Bysakh 1246, on which 198 rupces, 15 annas, is alleged to have been paid at various times, the last payment having been made on the 22nd Sawun 1247.

Respondent denied the transaction, pleading that the suit was preferred from enmity, arising from a case under Act IV. of 1840, after lapse of more than twelve years from the date of the alleged ground of action, and that of the persons named as conveyers of the alleged instalments, some were dead, and the rest under appellant's influence; with other immaterial matter.

The officiating sudder ameen dismissed the suit, principally because it had not been instituted within twelve years, the ordinary time allowed by Section 14, Regulation III. 1793, and because the evidence adduced and proposed to be adduced by appellant appeared insufficient to exempt his claim from the bar created by the said law.

Appellant, in his petition of appeal, controverts this view of the case, and alleges that he has not had a fair opportunity of proving his claim; with other matter.

The law quoted undoubtedly bars a suit for a debt after lapse of twelve years, from presumption that the debt has been paid; but

such presumption is removed and a new cause of action constituted by acknowledgment of the debt on the part of the debtor, and part payment within twelve years previously to the institution of a suit, is an acknowledgment sufficient to remove the presumption mentioned and revive the claim. Under these circumstances it appears to me necessary to remand the suit, in order that appellant may have a full and fair opportunity of producing such evidence of his claim as he may be able to prefer, his opponent also being at liberty to do the same; and as the office of sudder ameen in Sylhet no longer exists,

IT IS ORDERED,

That the decree of the officiating sudder ameen be reversed, and that the suit be transferred to the principal sudder ameer, for re-investigation and decision, in which the costs of this appeal (with the exception of the price of the stamp on which the petition of appeal is written, which will be refunded) will be duly provided for.

THE 28TH AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 1 of 1846.

Appeal from the late Mr. Bird, Moonsiff of Lushkurpoor.

Roop Chand Dutt, Appellant,

versus

Kasheenath Dut, Respondent.

RESPONDENT, whose former suit was struck off in default, has again sued to recover money under a bond, dated 4th Bysack 1233 B. S.

Appellant denied the claim, and advanced several defensive pleas.

The moonsiff decreed in favor of respondent on the grounds recorded by him.

Appellant now pleads, among other matters, that respondent's claim is not proved as required by the law.

I find that the claim is not substantiated as required by Section 15, Regulation III. 1793, extended to the courts of the moonsiffs by Section 14, Regulation XXIII. 1814; the bond not having been proved to have been executed in the presence of two credible witnesses, or consideration for it to have been received,

IT IS THEREFORE ORDERED,

That the appeal be decreed, and the decree of the moonsiff be reversed, with costs against respondent.

THE 29TH AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 35 of 1846.

Appeal from the late Mr. Bird, Moonsiff of Lushkurpoor.

Ram Pershad, Appellant,

versus

Tiloke Ram Naye and others, Respondents.

APPELLANT states that, as his daughter was playing with the daughter of Tiloke Ram, defendant, their shell ornaments were interchanged by the children; that, in consequence, Tiloke Ram and his sons sent Zeaoollah burkundaz and Manoolah chowkeedar to search his house; that these functionaries came to his house in his absence—stood in the veranda—caused his wife to give up the ornaments—and foully abused her, thereby injuring appellant's character to the extent of rupees 32, for which he sues.

Tiloke Ram, Sheeb Ram, Deep Ram, and Sham Ram, respondents, confirm the fact of the interchange of the ornaments, observing that it was clear, from appellant's declaration, that they, the respondents, took no part in searching appellant's house, and therefore could not have injured him; they also aver the damages claimed to be excessive.

Manoolah chowkeedar denies the justice of the claim, and states that Deep Ram complained of the loss of the ornaments to the burkundaz, who had assembled the villagers for the purpose of collecting his, the chowkeedar's, wages, and that he went to call appellant, but was told by the inmates of his house that he was not at home.

The moonsiff dismissed the suit as unproved.

Appellant alleges that his claim is made out, and that he has further evidence forthcoming if necessary.

No reason is given for a false suit; indeed, respondents' answers indicate that the suit has a true foundation, and three witnesses have sworn that the chowkeedar and burkundaz, or piada, whose name is not satisfactorily proved, went to appellant's house and gave his wife foul abuse: so that there can be little doubt that an injury has been committed, for which reparation should be made. Under such circumstances, I am of opinion that, before dismissing the suit, the moonsiff should have deputed an ameen to investigate the circumstances of the case, including the extent of damages proper to be awarded, if any be proved to be due, and I am further of opinion that this enquiry should still be made.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed: that the suit be remanded for re-investigation and decision: that the value of the stamp, on which the plaint is written, be returned: and that the costs of this appeal be provided for in the moonsiff's decree.

THE 30TH AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 107 of 1846.

Appeal from Mahomud Morad, Moonsiff of Hingajeeah.

Sheik Huzaree, Appellant,

versus

Sheik Shuma and others, Respondents.

APPELLANT sued for the value of two kids, which he alleges to have been prematurely born and to have died from their dam having been beaten for trespassing on respondents' field.

Four of the persons sued filed an answer, denying the declaration in the plaint, and advancing several defensive pleas.

The moonsiff dismissed the suit as unproved.

Appellant now alleges that two of the respondents agreed to pay for the kids, and that the moonsiff, if he could not rely on appellant's witnesses, should have made a local investigation of the case.

I concur with the moonsiff in holding the beating the goat, with the consequence ascribed, and the agreement by two of the respondents, to be unproved; and, as the alleged eye witnesses of the beating have failed to prove it, a local investigation must obviously be useless,

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff be affirmed, with costs against appellant.

THE 31ST AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 48 of 1846.

Appeal from Mahomud Morad, Moonsiff of Hingajeeah.

Punaoollah, Appellant,

versus

Mahomud Roop, Respondent.

APPELLANT sued to recover, with interest, rupees 15, advanced by him on pledge of silver ornaments effected on the 15th Magh 1244.

Respondent denied the transaction, pleading *alibi*, and alleged that the suit was made up by one Sunjur Mahomud.

The moonsiff dismissed the suit on the grounds recorded by him.

Appellant alleges that he carries on business as a mahajun, and that his alleged connection with Sunjur Mahomud is false, &c.

But the staleness of the alleged transaction, as one of pledge without a deed, renders it extremely suspicious: no account book

is forthcoming, though appellant alleges himself to carry on business as a mahajun: and witnesses have sworn to Sunjur Mahomud's offer to file a razeenamah, in this suit and in another which he had instituted, in his own name, against respondent, if the latter would relinquish some land to him; and under these suspicious circumstances I distrust the evidence adduced by appellant, and deem his claim to be unproved,

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff be affirmed, with costs of appeal against appellant.

THE 31ST AUGUST 1846.

PRESENT: H. STAINFORTH, JUDGE.

No. 94 of 1846.

Appeal from Hergouree Bose, Moonsiff of Russoolgunge.

Mahomed Nazim, Appellant,

versus

Waris Mundil and another, Respondents.

APPELLANT sued to recover, with interest, rupees 44, alleged to have been advanced to Waris Mundil, on the security of Sheik Mogul, on 5th Jeyt 1249 B. S.

Waris Mundul and Sheik Mogul answered, denying the transaction, pleading *alibi*, and alleging that the suit was fraudulently made up in consequence of one, instituted by Mahomud Ushruf, appellant's co-messing son, against Waris Mahomud and others, having been dismissed by this court.

The moonsiff dismissed appellant's claim on the grounds recorded by him.

Appellant now alleges that his claim is fully made out, with other immaterial matter.

I find that the suit, No. 77, instituted by Mahomud Ushruf against Waris Mundul, respondent in this case, and others, was dismissed on the 26th February 1845, and it is extremely improbable that if the bond on which the present suit is founded had been in existence at that time, appellant, who is admitted by his vaqueel to be father of the said Mahomud Ushruf, would have deferred bringing forward this suit which was not instituted before the 19th January 1846. On this ground, and because some of the witnesses in this case were witnesses in that instituted by Mahomud Ushruf, I look upon appellant's claim as extremely suspicious, and, in all probability, fraudulently made up on account of the failure of that preferred by his son,

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff be affirmed, with costs against appellant.

ZILLAH TIPPERAH.

THE 11TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 154 of 1846.

Regular Appeal from a decision of Moonshee Rumeezooddeen, Moonsiff of Cushba Noornugger, dated 27th May 1846.

Muddun Mohun Sahoo and others, (Defendants,) Appellants,
versus

Kasheenath and others, (Plaintiffs,) Respondents.

SUIT laid at rupees 103-11.

This was a suit for the recovery of a bond debt, with interest. The appeal is dismissed on default, under the provisions of Act XXIX. of 1841, appellants having failed to file the requisite pleading, setting forth the grounds and reasons of appeal, within six weeks from the 29th June, the date of appeal.

THE 12TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 113 of 1846.

Regular Appeal from a decision of Moonshee Mahomed Amah, 1st Grade Moonsiff of Ameergong, dated 5th May 1846.

Kumla Kaunth Bhudder, (Defendant,) Appellant,
versus

Mahomed Khuleel and three others, (Plaintiffs,) Respondents.

SUIT laid at rupees 60.

This was an action for the recovery of the above sum, alleged to have been extorted from the plaintiffs by the appellant, who, at the time, was an acting darogah of police, and other defendants not present in appeal.

One of the defendants, a thannah attorney, acknowledged having been concerned in the transaction, as an agent of the appellant; and on this acknowledgment, and the evidence of four witnesses on the part of the plaintiffs, a decree was passed against the appellant, as principal. The evidence adduced by the plaintiffs, taken *per se*, unquestionably goes to prove their case; but the testimony of one witness coincides so exactly with that of another, that, under the circumstances, the whole becomes open to suspicion. It does not appear by what means the plaintiffs, who

are mere cultivators of the soil, were enabled to produce, on a sudden emergency, so large a sum; and it is not credible that the appellant would have ventured to take it from them, without any attempt at concealment, and before the witnesses and several other persons, in the manner described in the evidence. If the plaintiffs are to be believed, credit must be given to the very improbable statement that one reason for complying with the demands of the appellant was, that the money could be recovered in a court of justice. The acknowledgment of one of the defendants, before alluded to, in no way affects this view of the case; for, the class of persons to which he belongs, is, generally speaking, a very disreputable one; and one of the witnesses is almost in the same predicament. The circumstance of a complaint not having been lodged in the first instance, in the criminal court, is, in itself, suspicious, as experience shows.

The evidence adduced by the plaintiff is certainly not of a character to justify the confirmation of the decision of the lower court, a decision which, if upheld, would not only deprive the appellant of his present situation, that of a thannah mohurir, but probably of the power of ever obtaining an honest livelihood, and cast a stigma on his character which would last for life. The moonsiff's decision is therefore reversed, and the plaintiff's suit dismissed with costs.

THE 12TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 125 of 1846.

Regular Appeal from a decision of Moolhy Ultaf Ally, Moonsiff of Patchpookeriah, dated 8th May 1846.

Kheda Gaze, (Defendant,) Appellant,

versus

Ahmed Khan, Caze, (Plaintiff,) Respondent.

SUIT laid at rupees 3-12.

This was an action brought by a pergunnah caze, for the recovery of fees for the celebration of three marriages by his moollah, in the family of the appellant. There were other defendants besides the appellant, but they were exonerated by the moonsiff from all liability, and did not appeal.

The appellant admitted the celebration of the marriages, as described by the respondent, but pleaded payment to the moollah, of what he (appellant) alleged to be the usual fee, in the case of persons in his situation in life, viz. 2 annas for each marriage. His plea was supported by the evidence of witnesses; and he filed copy of a decision of a former judge of this court, according to which a

fee of two annas, in cases of this kind, was held to be customary and sufficient. That decision, however, bore reference to a different pergunnah.

The respondent, on the other hand, filed copy of a decision of the principal sudder ameen of this district, in which a fee of one rupee was declared usual and proper; and this decision was given in a case arising out of a dispute which occurred within the jurisdiction of the respondent. He also brought witnesses who deposed that his claim of one rupee eight annas for each marriage, was customary and usual. The moonsiff gave a decree at the rate allowed by the principal sudder ameen, viz. one rupee, and on the ground that the payment made to the moollah in no way prejudiced or affected the claim of the cazee, to the usual fees.

From this decision, the party cast appeals; and there can be no doubt as to its illegality. Section 8, Regulation XXXIX. of 1793, declares that the cazees are not to exact any fees "excepting such as the parties concerned may voluntarily agree to pay," and Construction No. 1042 states, that, although a cazee may sue to recover what he may consider himself entitled to, as fees of office, "it rests with the court to determine the extent to which such claim should be admitted, and it must be remembered that *the payment of fees is entirely voluntary.*" In the present case, of "the party concerned," it has never been alleged that he ever entered into any agreement with the cazee; and it is proved by his witnesses, and has never been denied by the cazee himself, that fees equal in amount to those decreed by this court in a similar case, on a former occasion, have been paid to the moollah or deputy; while the moonsiff's assumption that the cazee is entitled to fees, over and above the sum paid to his moollah, is altogether groundless, and unsupported by any evidence whatever. Under these circumstances the decision of the lower court is reversed, and the respondent's (plaintiff's) suit dismissed with all costs.

THE 12TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 170 of 1846.

*Regular Appeal from a decision of Denobundhoo Chowdry,
Moonsiff of Toobkibaggrah, dated 29th June 1846.*

Tarah Ghazee, (Defendant,) Appellant,

versus

Meeah Rezah, (Plaintiff,) Respondent.

Suit laid at rupees 8-9-1-14.

This was a suit for the recovery of the above sum, as value of a certain proportion of the produce of a betel-nut garden payable as rent in kind to the plaintiff, by the defendant, on account 1261 and

1252 B. S. The defendant acknowledged that he had enjoyed the produce of the garden during the period specified ; but pleaded payment of rent to the plaintiff's brother, who, he alleged, was joint proprietor with the plaintiff ; and put in what purported to be a receipt for the rent sued for, granted by the former for himself and his brother. The case was postponed on several occasions with the view of enabling the defendant to take measures for the attendance of his witnesses, who, although duly summoned, had failed to appear ; but as he still neglected to proceed in the case, and as the plaintiff's statement had been proved by witnesses, a decree was given against him. In appeal, he advances nothing new, and shews no cause for his previous neglect : the moonsiff's decision is therefore confirmed without summoning the respondent.

THE 18TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 159 of 1846.

Regular Appeal from a decision of Moolvy Imdad Ali, Moonsiff of Nasirnugger, dated 12th May 1845.

Musst. Meherjaun Bebee, for herself, and as guardian of her son
Sumdool Ali, a minor, (Defendant,) Appellant,

versus

Nursingh Rai, (Plaintiff,) and on his decease, his sons Nubkissen Rai and Raj Kishen Ray, Respondents.

Sum laid at rupees 256-14-11-16.

This was a suit for restitution of possession on droons 2-3-15 of land, in kismut Sulponoagaon, pergunnah Srael, with mesne profits at the rate of 6 annas per kanee, with interest. The appeals in this case, and in No. 160, are from one and the same decision, and might have been preferred together, the appellants in both cases being proprietors of a joint undivided zemindaree, and decree having issued against them conjointly. For the reasons given in the judgment in the other case, (No. 160,) the appeal is dismissed, with costs. A copy of the judgment will be filed in this case.

THE 19TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 160 of 1846.

Regular Appeal from a decision of Moolvy Imdad Ali, Moonsiff of Nasirnugger, dated 12th May 1845.

Dewan Monowur Ali, (Defendant,) Appellant,

versus

Nursingh Rai, (Plaintiff,) and on his decease, his sons Nubkissen Rai and Rajkishen Rai, Respondents.

Sum laid at rupees 256-14-11-6.

This was a suit for restitution of possession, on droons 2-3-15 of land, in kismut Sulponoagaon, pergunnah Sersael, with mesne profits at the rate of 6 annas per kancee, with interest.

The respondents are joint proprietors of the 5 annas, 12 gundahs share of the pergunnah, and the appellants in this case and in No. 159, of the 3 annas, 8 gundahs share. The land in dispute is claimed by the opposing parties, as forming a part of their respective zemeendaries. In the original suit, the ryots were included among the defendants, but, having been relieved of liability, by the lower court, they did not appeal. The respondents state that they enjoyed undisturbed possession up to 1242 B. S., but in the following year were ejected by force, by the appellant and his co-sharer Musst. Meherjaun, the appellant in case No. 159. The appellant in this case (Monowur Ali) denies that the respondents ever had possession, or that the land ever formed a part of their estate. He urges that Nursingh Rai was, notoriously, not a person who would have allowed himself to be thus defrauded of his just rights for so long a period as eight years, without the adoption of measures, legal or illegal, for redress; and, further, that he (appellant) was entitled to a nonsuit on the following grounds. 1st, because the boundaries of the land, which consist of 45 fields, were not described in the plaint; and 2ndly, because one and the same cause of action had been divided into five different suits. The plea of Meherjaun (appellant in case No. 159) was to the same effect; but she further denied that the kismut in question contained any land belonging to the respondent's zemeendaree. First, with regard to the reasons advanced for a nonsuit. Unquestionably, it would have been more regular to have specified the boundaries, in the plaint; but, as the objection on that score was overruled by the lower court, and the defect remedied in the reply, it would not seem necessary, at this stage of the proceedings, to nonsuit the respondents. With regard to the alleged dividing of the cause of action, there is nothing to shew that the cause was one and the same. It would appear, from the respondents' statement, that they had been dispossessed by the appellants, of several small portions of land in different kismuts; but the appellants deny the allegation, and it is no where stated that the ejectment in the different suits, although said to have taken place about the same period, is founded on one and the same, or on any specific claim or plea. This objection, therefore, is also overruled. In reply to what the appellants say relative to the delay in bringing the suit, the respondents urge that it was the result of the continued absence from the district of the then zemeendar Nursingh Rai, and a frequent change of mofussil naibs. An ameen was deputed by the moonsiff to make a local investigation into the merits of the respondents' claim, the result of which was, that it was fully established, both on the evidence of witnesses, and by documentary

proofs, in the shape of receipts for rent, cuboolyuts, and accounts of demands, collections, and balances. The appellants filed no documentary evidence, but brought forward witnesses to prove their plea. The moonsiff confirmed the ameen's report, and gave a decree in favor of respondents, setting aside a number of cuboolyuts filed by the appellants subsequently to the receipt of the ameen's report, on the ground that the names of ryuts given in the cuboolyuts differed from those recorded in the rejoinder; and that the whole of the cuboolyuts purported to have been executed in favor of one Azmut, a farmer, on the fact of whose occupation of the land in dispute, in all the five cases before referred to, the appellants' claim rested, and who, as appeared from his own evidence, was the lessee of the land in dispute alone. In reply to the plea of the appellant Meherjaun, that the kismut contained no land belonging to their zemeendaree, the respondents, in appeal, filed copy of an official document in the karkoon dufter, in the office of the Accountant General, dated 1179 B. S., which shewed that the kismut *did* contain land attached to their estate; and that plea was no longer urged. It is admitted by all parties, that no butwarrah or measurement of the two zemeendaries ever took place. The case for the appellants rests solely on the evidence of their witnesses examined by the ameen, evidence which, under the circumstances, amounts literally to nothing. The appeal is therefore dismissed with costs, and the decision of the lower court affirmed.

THE 19TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 161 of 1846.

Regular Appeal from a decision of Moulvee Imdad Ali, Moonsiff of Nassirnugger, dated 16th June 1845.

Dewan Monowur Ali, (Defendant,) Appellant,

versus

ursing Rai (Plaintiff,) and on his decease, his sons Nubkishen Rai and Rajkishen Rai, Respondents.

Sum laid at rupees 148-3-4.

This is one of the five suits referred to in the judgment recorded in appeal No. 160. The plaint and the pleadings were the same as in that case, except as regards the points noticed below. The deputation of an ameen was attended by a similar result; and a decree was given against the appellant and his co-sharer, Must. Meherjaun, appellant in case No. 162, conjointly; but they pre-

ferred separate appeals. The judgment in the present case will embrace both. The pleas of the appellant Monowur Ali, in addition to those set forth in case No. 160, are, that of the thirteen parcels of land the subject of this suit, seven, although within the limits of the respondents' zemeendare, are the property of the appellant by purchase, five being *khooshash*,* and two *lakheraje*, or rent free. The pleas of the appellant Meherjaun are exactly similar to those in case No. 159; her answer therefore, so far as relates to the plea, that the *kismut* (in this case, *kismut Neez Serael*; bund *Mayoorbaree Pucheen*) contains no land belonging to the respondents' estate, is opposed to the answer of the other appellant, her co-sharer.

The moonsiff gave a decree against the two appellants, as in the former case; but as regards that portion of the land claimed by Monowur Ali, as *khooshash*, the decision is erroneous, and cannot be upheld. The claim of Monowur Ali to a part of the land as *lakheraje* is founded on a bill of sale in which the boundaries of the land sold are recorded; and those boundaries shew beyond a doubt that it is separate and distinct from the land claimed by the respondents. With regard to the *khooshash* claim, also advanced by Monowur Ali, the ameen reported that the land did form a part of that the subject of dispute; but that the claim was unsupported by any documentary evidence; and that the testimony of the witnesses brought to establish it was so contradictory, as well as being in some measure opposed to it, as to be of no value. After the ameen's report had been transmitted to the moonsiff, a bill of sale in support of the claim to the *khooshash* was filed by Monowur Ali, in the moonsiff's court; but as it bore a stamp of inadequate value it was returned to the party by whom it had been filed, to have the error rectified. Before this could be done however the case was taken up, and a decree given in favor of the respondents, for the whole land sued for, the moonsiff stating in his judgment that as the land claimed as *khooshash* had been proved to be beyond the limits of the land the subject of dispute, it was unnecessary to delay the decision of the case until the bill of sale should be returned. This part of the moonsiff's judgment is clearly erroneous. He has understood the remarks recorded by the ameen, regarding the *lakheraje* land, as having reference to the *khooshash*. The case is therefore remanded for revision on this point. The bill of sale being now filed, the claim which the appellant founds on it will be investigated, and disposed of on its merits. The appellants will receive back the value of the stamps on which their petitions of appeal were engrossed.

* A tenure very common in *pergunnah Serael*, held by relatives or dependants of the *zemeendar*, on a quit rent.

THE 19TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 162 of 1846.

Regular Appeal from a decision of Moolvy Imdad Ali, Moonsiff of Nassirnugger, dated 16th June 1845.

Mussumaut Meherjaun Beebee, for herself, and as guardian of her minor son Sundool Ali, (Defendant,) Appellant,

versus

Nursingh Rai, (Plaintiff,) and on his decease, his sons Nubkishen Rai and Rajkishen Rai, Respondents.

SUIT laid at rupees 148-3-4.

The judgment recorded this day, in appeal No. 161, embraces this appeal. A copy of that judgment will be filed in this case,

THE 19TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 163 of 1846.

Regular Appeal from a decision of Moolvy Imdad Ali, Moonsiff of Nassirnugger, dated 12th August 1845.

Dewan Monowur Ali, (Defendant,) Appellant,

versus

Nursingh Rai, (Plaintiff,) and on his decease, his sons Nubkishen Rai and Rajkishen Rai, Respondents.

SUIT laid at rupees 276-2.

This is one of the five suits referred to in the judgment recorded in appeal No. 160; but the circumstances are somewhat different. The respondents sue as proprietors of the 7 anna share of the pergunnah acquired by auction purchase in 1243 B. S., but they have never obtained possession of the land in dispute, which consists of droons 2-3-11-1 in kiamut Gonara and kanecs 3-0-2 in Sulponaogaon. Their claim includes mesne profits at the rate of 6 annas per kanec, with interest. The pleadings are precisely the same as in case No. 160; and as this case must be remanded for further investigation, it is unnecessary to go into a detail of them, the reasons for the remand being confined to the moonsiff's judgment. *

The decision of the lower court is far from creditable. A decree is given in favor of the respondents, and the documentary evidence filed by the appellant rejected for the following reasons. The moonsiff states that cuboolyuts alleged to have been granted to a farmer, whose lease extended over a period of no more than 13

years, were found to cover a period of 26 years; and that others, executed in favor of a zemindar, relate to a period when the land was said to have been farmed. Both these statements are incorrect, as a careful examination of the documents will shew. Again, the moonsiff states it does not appear to which of three periods, during which the land was leased to the farmer, the coboolyuts purporting to have been granted to him, refer; or, whether the coboolyuts actually relate to the land in dispute. It was the duty of the moonsiff to have satisfied himself on these two points, either by local enquiry, or otherwise—and he will now do so; and, after a careful investigation of the pleas advanced by the appellant, decide the case on its merits. The value of the stamp on which the petition of appeal is written will be refunded.

THE 19TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 164 of 1846.

Regular Appeal from a decision of Moolvy Imdad Ali, Moonsiff of Nassirnugger, dated 9th August 1845.

Dewan Monowur Ali, (Defendant,) Appellant,

versus

Nursingh Rai, (Plaintiff,) and on his deccase, his sons Nubkishen Rai and Rajkishen Rai, Respondents.

SUIT laid at rupees 297-13-8.

This was one of the five suits referred to in appeal No. 160. The plaint and pleadings were exactly the same as in that case. The deputation of an ameen was attended by a similar result; and a decree was passed against the appellant and his co-sharer Musst. Meherjaun, but the latter did not appeal. The land in dispute consisted of 48 fields, in kismut Goonara, with an area of droons 2-10-5. The documentary evidence filed by both parties was of the same nature as that in case No. 160. That filed by the appellant related only to the period of the alleged lease to Azmut, and as such was rejected by the moonsiff as of no value. There being no cause for interfering with the decision of the lower court, the appeal is dismissed with costs. A copy of the judgment of this court in case No. 160, will be filed with the record.

THE 20TH. AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 6 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 17th March 1846.

Doorgamoney Wozeer and Seebjey Thakoor, (Plaintiffs,
Appellants,

versus

Pran Shah Fukeer, Moharaja Kishen Kishore Manick, and Bungoo Chunder Buttacharje, (Defendants,) Respondents.

SUIT laid at rupees 2,285-11-6.

This was a suit for restitution of possession, on droons 7-5-10-2 of land, claimed by the plaintiffs as forming a part of their ancestral talook, for which they had always received rent, until dispossessed by the defendant Pran Shah in the year 1250 B. S., on the strength of a summary award under Act IV. of 1840, for 5 droons, obtained, it was alleged, by collusion with the defendant Bungoo Chunder, a thesildar of the rajah of Tipperah. The land was claimed by Pran Shah as an hereditary rent free tenure, held in undisturbed rent free occupancy, under a *sunnud* and an *istikhlaee chittee* or confirmatory grant for a period of 77 years.

The principal sudder ameen, without entering upon the essential point of possession, rejected the *sunnud* and *chittee* as forgeries, and passed a decree declaring the land liable to assessment, as an invalid rent free tenure, but throwing out the claim for possession and ejectment of the present occupant.

From this decision the plaintiffs appeal, on the ground that they are entitled to a decree for restitution of possession, the land having been in their occupation until the year 1250 B. S. The documents on which the defendant's (Pran Shah's) claim is founded, have been declared null and void; but the important question of previous possession has not been entered upon; and until that point be decided, both the investigation and the judgment must be held to be incomplete, inasmuch as undisturbed rent free occupation by Pran Shah, for 77 years, would render him liable only to the payment of a very moderate rate of assessment, as a dependent talookdar; while, in the event of his plea to that effect being disproved, he would be liable to be ejected from the land altogether. The principal sudder ameen states incidentally, that the report given in by an ameen, who had been deputed to make an enquiry into the merits of the case, goes to establish the plaintiff's claim; but his decision implies the contrary: and although it appears that the case was referred to the collector for report, under the provisions of section 30, Regulation II. of 1819, no mention is

made in the decree of the result of the reference. The suit is remanded for decision on its merits, after the question of possession, antecedent to the year 1250 B. S., shall have been determined. The value of the stamp on which the petition of appeal is engrossed, will be refunded.

THE 22ND AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 2 of 1846.

Regular Appeal from a decision of Moolnee Mahomed Ali, Principal Sudder Ameen, dated 24th January 1846.

Musst. Murnah Beebee, (Plaintiff,) Appellant,

versus

Musst. Choona Bebee, Musst. Kudur Jaun, and Musst. Oolfaut Jaun, (Defendants,) Respondents.

SUIT laid at rupees 999-7-6-3.

This was a claim, under the Mahomedan law of inheritance, for a share, equal to five twenty-fourths of the real estate of Chand Bux, deceased brother of the plaintiff, husband of the defendant Choona Bebee, and father of the other defendants.

The defendants admitted the right of the plaintiff as heir to the extent claimed; but pleaded, first, the execution by the plaintiff of a *solenamah* whereby, in consideration of a sum of rupees 1,050 received, she gave up all further claim on the estate; and secondly, that a part of the property detailed in the plaint, viz. talook Oolfaut Jaun, did not belong to the estate, having been acquired by purchase by the defendants Kudur Jaun and Oolfaut Jaun.

The principal sudder ameen, considering the execution of the *solenamah* proved, and laying it down as a principle of Mahomedan law that the proprietary right in property purchased by a father in the name of his daughters is vested in the latter alone, dismissed the suit.

This decision is open to objection and cannot be upheld. First, as regards the *solenamah*, it is scarcely credible that the plaintiff only six months after having executed it, and after having received a larger sum of money than she now claims, would institute the present suit, well knowing that the deed would be produced in evidence against her. Further, it is proved by documentary evidence that the plaintiff has always claimed an interest in talook Oolfaut Jaun, and yet that portion of the property is not mentioned in the deed—a suspicious circumstance. Again, the deed has not been registered: the party, by whom the plaintiff's name is said by the witnesses to have been written on it, on being summoned by this court, denies the transaction: and finally, which, taken in

conjunction with the above circumstances, is fatal to the plea, Ram Konnie, the party by whom the deed is stated to have been drawn out, is neither a professional person, nor in any way connected with the plaintiff or the defendants, and within the last year, is proved to have given evidence, in *three other suits* unconnected the one with the other, to the very same effect as his evidence in this case, viz. that he was a witness to the execution of documents in the different suits *and was the party by whom they were drawn out*. One of the three remaining witnesses to the solenamah, viz. Gooroo Churn, is also proved to be a witness to a deed in one of the three suits above referred to, and to have given evidence in a case lately pending before the collector of this district on a similar point. To declare a deed supported by such evidence to be valid, to the exclusion of the plaintiff's rights of inheritance, is out of the question.

With regard to the talook Oolfaut Jaun, although the cazee has declared the principle recognized by the principal sudder ameen to be erroneous, there is abundant documentary and other evidence to prove that it was purchased by Chand Bux, for his daughters, and named after them; and that they have long been the registered proprietors, and recognized as being in possession.

The decision of the lower court is reversed, and a decree given in favor of the plaintiff to the extent claimed, except as regards talook Oolfaut Jaun, to any rights in which the claim is dismissed. Costs will be charged to the parties respectively, in proportion to the value of the property the claim to which has been decreed or dismissed: mesne profits payable from this date.

THE 22ND AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 11 of 1846.

Regular Appeal from a decision of Moolovy Mahomed Ali, Principal Sudder Ameen, dated 11th May 1846.

Mahomed Ali and Chand Gazee, (Plaintiffs,) Appellants,

versus

Mahomed Kamil, Hur Chunder Deo, and Mahomed Tukee,
(Defendants,) Respondents.

SUIT laid at rupees 798.

This was an action for damages, for withholding receipts for rent. The defendants Mahomed Kamil and Hur Chunder Deo are farmers, and the plaintiffs and the defendant Mahomed Tukee their under farmers. Mahomed Tukee was made a defendant, being, it was alleged, in collusion with Mahomed Kamil and Hur Chunder, but he neither appeared before the lower court, nor

in appeal. The rent, the subject of dispute, was acknowledged to have been received by the farmers; but they pleaded delivery of receipts to Mahomed Tukee the plaintiff's partner, and filed receipts for them, which were duly proved. The plaintiffs brought witnesses to prove that the rent was paid on dates different from those on which the farmers stated that they had received it, without receipts having been granted; but this evidence was not credited by the principal sudder ameen, and the suit was dismissed. This decision is quite unobjectionable. Nothing new has been advanced in appeal; and even supposing, for the sake of argument, that the plaintiffs' evidence were not open to objection, there is nothing in it to shew that the receipts were *refused* in the sense contemplated by Clause 1, Section 63, Regulation VIII. of 1793. The appeal is dismissed with costs.

THE 23RD AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 7 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 5th March 1846.

Fukeer Chunder Shah, Pauper, (Plaintiff,) Appellant,

versus

Ramsurrun Shah and others, (Defendants,) Respondents.

SUIT laid at rupees 5,000.

This was a suit for restitution of possession on a four annas share of certain property, real and personal, ancestral and acquired, with mesne profits. The defendants having failed to appear within the period specified in the proclamation, the lower court proceed to try the cause *ex parte*. Before its decision the defendants appeared, but were not allowed to plead; and an interlocutory order, overruling their motion for permission to do so, was confirmed by the zillah court in appeal. The suit was dismissed after an *ex parte* investigation, and the present appeal preferred by the plaintiff. The plaintiff states that on the strength of an order of the sessions court, affirming a summary decision of the magistrate dated 20th July 1843, whereby they were maintained in possession of some land in two mouzahs, the defendants had ejected him from the whole of the family property, previously held by him and them in co-parcenary. The decision of the principal sudder ameen involves a most extraordinary construction of the law of limitations. It declares, that, inasmuch as it is stated by the plaintiff that the property claimed is hereditary, and was held in joint occupancy by his father and uncles, the cause of action must be held to date from his father's death, a period of about 27 years,

and, consequently, that suit is barred by lapse of time. The principal sudder ameen then notices, in a summary manner, some exhibits previously put in by the plaintiff, and without affording him an opportunity of producing other proof, dismisses the suit. As the cause of action in this case is not the death of plaintiff's father, but plaintiff's ejectment; and as plaintiff has produced in appeal abundant proof of possession, (to what extent, has not, of course, been determined,) the decision of the lower court is reversed, and the case remanded for trial *de novo*; the respondents being admitted parties to the suit.

THE 24TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 9 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 21st April 1846.

Gooroo Persaud Koond, (Plaintiff,) Appellant,
versus

Mahomed Reza and others, (Defendants,) Respondents.

SUIT laid at rupees 788-13-3-12.

This was a suit for rent, at the rate of Sicca rupees 37-8-4-2 per annum, from 1241 to 1252 B. S., inclusive. Plaintiff is the auction purchaser of a 5 anna share of the 11 anna share of pergunnah Russulpore: the defendants are dependent talookdars in the plaintiff's zemeendaree. In support of his claim, the plaintiff files authenticated copies of papers taken from the collector's office. The defendants admit the right of the plaintiff to a rent of Sicca rupees 32-13, and plead payment at that rate; but they adduce no evidence whatever to prove their plea.

The principal sudder ameen states in his decision that the documentary evidence filed by the plaintiff, does not prove either that the defendants' talook forms a part of the plaintiff's zemeendaree, or that the former proprietors of the zemeendaree had received rent from the defendants; but as the defendants acknowledge the rent of their talook to be Sicca rupees 32-13, and that it is payable to the plaintiff, a decree is given at that rate. The respondents did not appear in appeal. The decision of the lower court cannot be upheld. The plea of payment entered by the respondents, not having been proved, the only point for decision was the rate or amount of rent: and the respondents having failed to produce any evidence to shew that the rent was not correctly recorded in the collectorate papers, a decree for the full amount sued for ought to have issued. The decision of the principal sudder ameen is therefore amended so as to include the entire sum claimed. Costs payable by respondents.

THE 25TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 10 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 29th April 1846.

Rauj Chunder Naugh, Chunder Kishore Naugh, and Mohes Chunder Naugh, (Plaintiffs,) Appellants,

versus

Lall Mahomed Sikdar, (Defendant,) Respondent.

SUIT laid at Company's rupees 706-10-10-6.

This was a suit for the recovery of the above sum, which, the plaintiffs alleged, had been improperly paid by the collector of Mymensingh to the defendant, after an adjustment of accounts, on occasion of the sale of two talooks, the property of the plaintiffs and the defendant, for balances of Government revenue. The suit was dismissed by the lower court on the two following grounds; 1st, because the adjustment of accounts made by the collector, appeared just and equitable: and 2ndly, because having once taken the sum awarded to him by the collector, objection could not now be taken by plaintiffs to that award. The latter of these reasons is of no weight whatever. The only question for decision is, whether the principle on which the adjustment was based, be just and equitable, or the contrary. The circumstances of the case are as follow. Prior to the date of the order for bringing the talooks to sale, they had been treated as distinct and separate estates: the plaintiffs were the proprietors of one of them, No. 5, with a sudder jumma of Company's rupees 534-8-2, and the defendant proprietor of the other, No. 11, sudder jumma Company's rupees 362-8-10. The separation of the estates having been declared illegal, (by the revenue authorities,) they were brought to sale as one talook, for the recovery of arrears due from both. In adjusting the accounts, after the sale, the collector drew up a statement of demands, receipts, and balances, *for each talook separately*, according to which the balances of revenue, up to the day of sale, stood as follows.

Balances due from talook No. 5, the property of the plaintiffs, Company's rupees 836-8.

Ditto ditto from ditto No. 11, the property of the defendant, Company's rupees 1,497-11-10.

The sale proceeds having been rateably apportioned to the two talooks, in proportion to the sudder jumma of each respectively, and the above balances having been deducted from them, a sum of Company's rupees 2181-7-7 remained available, *as surplus proceeds*, at the credit of the plaintiffs, and Company's rupees 549-4-7 at the credit of the defendant. For some reason, however, which does not appear, the collector, after the above account had been

drawn out, divided the *aggregate surplus proceeds* into two sums, calculated according to the amount *sudder jumma* of the two talooks, respectively, and *setting aside* the previous account, directed payment to be made accordingly.

The accounts therefore were drawn out on one principle, and the money paid on another; and, as a result of the change, the plaintiffs received only Company's rupees 1627-3, instead of Company's rupees 2181-7-7. The present suit was brought for the recovery of the amount difference between these two sums; and on every principle of justice, the plaintiffs are entitled to an award in their favor. The decision of the lower court is therefore reversed, and a decree passed for the full amount claimed. Costs payable by respondent.

THE 26TH AUGUST 1846.

PRESENT: T. BRUCE, JUDGE.

No. 12 of 1846.

Regular Appeal from a decision of Moolvee Muhomed Ali, Principal Sudder Ameen, dated 16th April 1846.

Sonah Ghazee, Pauper, (Plaintiff,) Appellant,

versus

Hossein Ghazee and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 340-9-3-1.

This was a suit for restitution of possession brought by one ryut against several others, who, it was stated, had ejected him from possession after having granted him a lease of the land in dispute. Without entering into the merits of the case, the lower court dismissed the suit on the ground that an action for possession brought by a ryut does not lie; that the proprietor of the land (by which appears to be meant the *zemindar*) is alone vested with the right of possession; that the functions of ryut are limited to the cultivation of the soil, and the payment of rent to the *zemindar*; and that an order for possession in favor of a ryut would void the rights of the landholder.

The principle on which this decision is based is one which cannot be maintained. The interests and rights existing between the landholder and the cultivator of the soil are often numerous and various; and the principle adopted by the principal *sudder ameen* would annul them all. An action for possession will lie, whether brought by the *zemindar* or by a dependent *tahokdar*, a farmer, a ryut, or any other party possessed of limited rights in the *zemindaree*, but the extent of such rights will be determined by the courts. The suit is therefore remanded for investigation and decision on its merits.

. ZILLAH TIRHOOT.

THE 5TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 466.

*Regular Appeal from the decision of the Moonsiff of Mozufferpore,
Moulvee Aradut Alli, dated 12th May 1846.*

Jothy Mahto, Appellant, (Defendant,)

versus

Talawur Thakoor, Respondent, (Plaintiff.)

THIS suit was instituted to recover the sum of Company's rupees 14-4, being the amount of a bond, principal and interest, granted by the defendant, to the plaintiff, on the 27th of Phalgun 1252. The defendant denied ever having had any money transactions with the plaintiff, and alleged that the claim was altogether false, got up owing to a dispute about land which he, the defendant, has with the plaintiff.

The moonsiff found the claim proven and decreed for the plaintiff accordingly. In this court it appearing that one of the witnesses to the bond denied all knowledge of the transaction, that the evidence was otherwise nearly balanced, and that all the evidence available had not been taken, it was accordingly ordered that the case be sent back for re-investigation, and that the moonsiff's decree be rescinded.

THE 24TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 105.

*Regular Appeal from the decision of the Moonsiff of Coylee,
Muhmood Alum, dated the 18th December 1845.*

Mohadeo Dutt and Sebec Sing, Appellants, (Plaintiffs,)

versus

Pershad Thackoor and Toolsee Thackoor, Respondents,
(Defendants.)

THIS suit was instituted in the lower court by the appellants, tekadars of the village of Muhsoutha, pergunah Gudchaond, to recover the sum of Company's rupees 31-9-2, on account of arrears of rent on 13 beegahs, 14 cottahs, with interest, after deducting Company's rupees 9-8-2, payments from the respondents' ryuts and cultivators of the same.

The plaintiffs state that they obtained a lease of the aforesaid village from the proprietors Musst. Bilassee Coomar and others from the year 1251 to 1259, nine years, and that in consequence they issued notices to the ryuts according to the provisions of Regulation V. of 1812, calling upon them to come in and take pottehs and grant kabulyuts: to this however they paid no attention and refused to pay their just dues, they therefore sue the defendants for the above arrears. The respondents in defence state that they only occupy 12 beegahs, 5 cottahs, including garden ground, bamboo plantation, and waste land, and which they have occupied from a long period at the rate of 1 rupee per beegah, also that they have paid the rent justly due as admitted by the plaintiff, and that the real object of the present suit, although ostensibly merely for arrears of rent, is in reality to raise the nerick or rate of the village.

The moonsiff, finding that the claim was unjust and evidently an attempt to raise the rents on the ryuts illegally, also that the notice under Regulation V. of 1812 had not been duly served, dismissed the suit.

The plaintiffs in appeal merely reiterate their former claim.

JUDGMENT.

It appearing that the defendants in this suit are old khoo, khast ryuts of the village and have cultivated their land from time immemorial, and that they are therefore not subject to enhancement of ~~rent~~, also that the notice was served on them not at the commencement of the year as required by the Regulations, but in the month of Kartick, and that only on one ryut and not upon them severally, it is therefore ordered that the appeal be dismissed with costs.

THE 24TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 106.

Regular Appeal from the decision of the Moonsiff of Coylee, Muhmood Alum, dated the 18th December 1845.

Mohadeo Dutt and Sebi Sing, Appellants, (Plaintiffs,)

versus

Bhojoo Thakoor and four others, Respondents, (Defendants.)

THE appellants are the same as in the case No. 105, and their claim is of the same nature, viz. Company's rupees 92-2, arrears of rent on 29 beegahs of land held by the defendants in the same village of Muhseowtha; the defence of the defendants is also of the same nature as in the former case, and on the same grounds the decision of the lower court is upheld, and the appeal ordered to be dismissed with costs.

THE 24TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 107.

Regular Appeal from the decision of the Moonsiff of Coylee, Mukmood Alum, dated 18th December 1845.

Mohadeo Dutt and Sebi Sing, Appellants, (Plaintiffs,)

versus

Rutton Thakoor and two others, Respondents, (Defendants.)

THE appellants are the same as in the case No. 105, and their claim is of the same nature, viz. Company's rupees 12-3, arrears of rent on 6 beegahs and 11 cottahs of land held by the defendants in the same village of Muhsowtha; the defence of the defendants is also of the same nature as in the former case, and on the same grounds the decision of the lower court is upheld, and the appeal ordered to be dismissed with costs.

THE 24TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 108.

Regular Appeal from the decision of the Moonsiff of Coylee, Mukmood Alum, dated the 18th December 1845.

Mohadeo Dutt and Sebi Sing, Appellants, (Plaintiffs,)

versus

Dyahram Thakoor and three others, Respondents, (Defendants.)

THE appellants are the same as in the case No. 105, and their claim is of the same nature, viz. Company's rupees 118-4, arrears of rent on 54 beegahs and 15 cottahs of land held by the defendants in the same village of Muhsowtha; the defence of the defendants is also of the same nature as in the former case, and on the same grounds the decision of the lower court is upheld, and the appeal ordered to be dismissed with costs.

THE 24TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 109.

Regular Appeal from the decision of the Moonsiff of Coylee, Mukmood Alum, dated 18th December 1845.

Mohadeo Dutt and Sebi Sing, Appellants, (Plaintiffs,)

versus

Soonder Thakoor and five others, Respondents, (Defendants.)

THE appellants are the same as in the case No. 105, and their claim is of the same nature, viz. Company's rupees 63-3-6, arrears

of rent on 20 beegahs and 13 cottahs of land, held by the defendants in the same village of Muhsowtha, the defence of the defendants is also of the same nature as in the former case, and on the same grounds the decision of the lower court is upheld, and the appeal ordered to be dismissed with costs.

THE 26TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 129.

Regular Appeal from a decision from the Additional Principal Sudder Ameen, Mulvee Ashruff Hossein Khan, dated 17th February 1845.

Goor Suhai Bhugut, Gomasteh, and Pershad Bhugut, Malzamin, Appellants, (Defendants,)

versus

Syud Lootf Ali Khan, Respondent, (Plaintiff.)

THIS action was brought, in the lower court, to recover the sum of Company's rupees 2,642-3-7-13, from the defendant Goor Suhai, who had been appointed gomasteh of the village of Dhumaon, pergunnah Bala Gutch, belonging to the plaintiff, on account of arrears of collections not accounted for. The plaintiff states that, in the month of Kartick 1247, he appointed the defendant Goor Suhai, on the security of his father Pershad, the other defendant, gomasteh and tuhseeldar of eight annas share of the village of Dhumaon, and in which office he continued for two years, viz. 1247 and 1248; but finding that he only paid in a part of the collections, and applied the rest to his own purposes, he was dismissed; and it appearing from the gomasteh's own accounts and from those of the village put-waree, that there was a sum due on account of collections of Sicca rupees 1,655-6-3½, for which, the defendants refusing to settle the same, with interest and batta he brings this action.

The defendant Goor Suhai admits that he was gomasteh of the above village for the above mentioned two years; but states that the claim is totally false and got up, and asserts that at the time of giving over charge the accounts were made up, and which shewed a balance against him of only Sicca rupees 67-14, and for the satisfaction of which the plaintiff took a bond for the same amount from his father the malzamin, and returned the original security bond, which is now in his possession; moreover, that the bond for the balance of Sicca rupees 67-14 has since been redeemed, and which he also now possesses.

In the lower court the plaintiff produced what he stated to be the original security bond, executed by Pershad Bhugut, but it being written on an improper stamp, the additional principal sudder ameen

allowed time to have the error corrected. The defendants also presented a document purporting to be the *true* security bond, and which was returned on plaintiff's claim being satisfied by a bond for the balance; but the lower court rejected this, on the ground that the document was not written on a stamp paper of the proper value, although he had allowed time for the document presented by the other party to be properly stamped. The additional principal sudder ameen, finding the balance claimed by the plaintiff satisfactorily proven by the putwarree and village account, gave a decree in his favour for the full amount. The appellants urged, in addition to what they had before alleged, that the documents filed by the plaintiffs were not attested by their signature, and that the lower court unjustly refused to admit their document.

JUDGMENT.

In this court, it appearing that the investigation was evidently incomplete, documents having been admitted from one party and not from the other, and it being most probable that forgery has been committed by one or the other party:

Ordered: that the decision of the additional principal sudder ameen be rescinded, and the case sent back for a careful re-investigation.

THE 29TH AUGUST 1846.

PRESENT: J. F. CATHCART, JUDGE.

Case No. 181.

Regular Appeal from the decision of the Additional Principal Sudder Ameen, Molvee Ushruf Hossein Khan, dated 17th March 1845.

Byjun Sing and others, Appellants, (Plaintiffs,)

versus

Kirpaul Suhai, and after his death Teluckdharee Chutterdharee and others, heirs, Respondents, (Defendants.)

THIS suit was instituted, in the lower court, to recover the sum of Company's rupees 1064-8-8, principal, interest, and batta, lent on a bond to the defendant Kirpaul Suhai, since deceased.

The plaintiffs state that Kirpaul Suhai, of Peheladpoor, borrowed from them on the 12th of Magh 1240 F. S. the sum of Company's rupees 499, and for which he gave his bond duly signed and sealed bearing interest at the rate of 12 per cent. per annum: the bond became due in the end of the month of Kartick 1241 F. S.; but the aforesaid under various pretexts put off the payment of the same; and when they, the plaintiffs, were about to bring an action for the debt in the month of Falgoon 1250 F. S. the defendant Kirpaul Suhai came to them and agreed to pay the amount of the bond, principal and interest, by the month of Bysack, provided the action

was stayed, and on that account the action was deferred, but notwithstanding the expiration of the above period the defendant has not yet paid a pice; they therefore bring the present action to recover the amount due to them. In the lower court the case was first taken up *ex parte*, but afterwards the defendants were allowed to plead. The defendants in their defence allege that the whole claim is false and deny that such a bond was ever executed, or that they ever borrowed a pice, or had any money transactions with the plaintiffs, also that the action was brought through spite and with the intention of depriving them of some landed property; they add moreover that although the bond was made payable in nine months and eighteen days, this action has not been brought before the expiration of nearly twelve years, (viz. eleven years, seven months and twenty-eight days;) also that the bond is said to have been executed in the village of Mominpoor, but which is the place of residence of neither the plaintiffs nor defendants, and that it would appear extraordinary that the plaintiffs should have taken the money from their own homes to another place, in order to lend it to them, the defendants. In their jowab-ul-jowab the plaintiffs state that the bond was given in satisfaction of a former claim, on account of a decree of court, in addition to rupees 100 in cash. The lower court dismissed the claim, on the grounds that the bond is of very old date, nearly twelve years; that the evidence for the proof is contradictory and contrary to the meaning of the bond; also, that what is stated by the plaintiffs in their jowab-ul-jowab is contrary to the meaning of the bond, and is not borne out by the witnesses, some of whom only state to that effect. With this decision I fully concur, and considering the claim altogether a very doubtful and irregular one, order the appeal to be dismissed with costs, and confirm the decision of the lower court.

ZILLAH TIRHOOT.

THE 11TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 742.

Regular Appeal from a decision passed by Molvi Neamat Ali Khan, Principal Sudder Ameen of Mozufferpore, dated 13th of March 1844.

Gobind Pershaud, Appellant, (Plaintiff,)

versus

Aman Ali Khan and Furzund Ali Khan, farmers, Baboo Lal Chowdree and twenty-two others, proprietors and sharers, Respondents, (Defendants.)

THIS suit was instituted by the appellant for the sum of Company's rupees 1827-15-6, being the amount of principal and interest of mesne profits on 4 annas and 13 gundas portion, within 7 annas and 3 gundahs share of village Shunkurpore Khyree, aslee mu daklee (or the original and all thereunto appertaining) purgunnah Burwara, from 1st of Bysack 1236 to 1245 Fuslee. The said share was sold at auction in satisfaction of decrees of court, and purchased by Durgah Duth and Gungabishen, from whom the same was purchased by the plaintiff. On taking possession Aman Ali Khan objected, being farmer, produced his lease, and asserted he would pay the rent agreeable thereto. The court confirmed him in the possession, directed the receipt of the rent from him, and took a moochulka from him to pay the rent, according to his acknowledgment. Not having paid the rent, a regular suit was instituted for it.

The principal sudder ameen, Syed Abdool Wahid Khan, directed to sue to establish the proprietary right to the portion purchased, when the rent, in a manner of mesne profits, would be claimable. A suit for the proprietary right was instituted, a decree obtained for the possession of 4 annas, 13 gundas portion. On execution of that decree, application was also made for the mesne profits, was refused, with direction to sue regularly for it. Hence this suit.

Answer of Aman Ali Khan. The plaintiff not having sued for the mesne profits in the suit for the proprietary right and possession, the present suit is contrary to the 6th paragraph of the circular letter dated 11th January 1839. Being farmer according to the tenor of the lease, the rent is payable to the grantor thereof.

Answer of Furzund Ali. Having transferred his portion of the farm by deeds to Aman Ali Khan, he has no concern in the matter.

Answer of Mhohur Duth Chowdree and two others. The farmer not having paid the rent to them, they are not liable for the payment.

The principal sudder ameen, on the 13th March 1844, dismissed the suit, on the ground it being contrary to the 6th paragraph of circular letter dated 11th January 1839.

Against this decision the plaintiff under a summary petition appealed. The judge on the 4th of April 1844 reversed the decision, and returned the case for re-investigation, whether or not there was a claim to the mesne profits. The principal sudder ameen, after re-investigation of the case on the 27th of June 1844, passed a decision in favour of the plaintiff; the amount of decree and costs payable by Aman Ali Khan only, exempting the other defendants from liability.

Against the judge's order of the 4th of April 1844 the defendant, Aman Ali Khan, appealed to the Sudder Dewanny Adawlut. That Court pointed out the reversal of the principal sudder ameen's decision on a summary appeal, was improper, reversed the judge's order or decision, and directed, on a regular appeal being filed within one month, to re-investigate the case. By this order the decision of the principal sudder ameen passed on the 27th of June 1844, is also reversed.

The plaintiff appealed against the decision passed under date 13th of March 1844 by the principal sudder ameen, urging: In this case the 6th paragraph of the circular dated 11th of January 1839, is not a bar. The respondent Aman Ali Khan filed a petition at the time of plaintiff taking possession, that the rent might be taken from him agreeably to the conditions of the lease; and wrote a moochulka to that purport; and from the decisions passed under date 25th August 1840 and 11th January 1842, his claim thereto is proved.

Answer of respondent Aman Ali Khan. The appellant, not having sued for the mesne profits at the same time in the suit for the proprietary right and possession, this suit is therefore contrary to the order of the circular letter dated 11th January 1839, and the trial thereof inadmissible.

Answer of Furzund Ali. He has no concern in the matter.

The other respondent filed no answer.

COURT.

It appears, when the appellant was in the first instance taking possession of his purchase, the respondent Aman Ali Khan objected thereto, being the farmer of the land; but acknowledged in a petition to the court his readiness to pay the rent under conditions specified in the lease, and gave a written moochulka to that purport. Notwithstanding which the principal sudder ameen,

under date 25th of August 1840, dismissed the appellant's suit for rent, with directions to sue, to establish his proprietary right to the land: at the same time stating, conformably to the portion of the proprietary right established, plaintiff has a right to the rent, —which is a declaration that the rent or mesne profits, agreeably to that ratio, would be awarded. In the body of the decision dated 11th January 1842, it is clearly indicated, quoting the former decision on that point: although not awarded under the decree it is evidently a mere omission, if it were not contemplated to be awarded, no mention thereof would have been made. Under the circumstance stated in the dismissal decision dated 25th August 1840, it became unnecessary for the appellant to include the claim to the mesne profits in his suit for proprietary right, consequently the present suit does not fall under the 6th paragraph of the circular letter dated 11th January 1839. Under the above circumstances the mesne profits are decreed to the appellant agreeably to his established portion, conformable to the conditions of the farm lease to Aman Ali Khan, to the date the appellant was put in possession under the decree in his favour for his proprietary right; if then restrained from collecting his own rents, under the above-mentioned lease, to the day that deed expired—to be paid by the established heirs of Aman Ali Khan, deceased; viz, Musst. Immamnee Begum, his widow, and Furzund Ali, his brother, together with costs of both courts. The other respondents are exempted from the liability; and the decision passed on the 13th of March 1844, by the principal sudder ameen, is reversed.

THE 13TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 820.

Regular Appeal from a decision passed by Syud Ashruf Hoosein Khan, 2nd Principal Sudder Ameen of Mozufferpore, dated 10th September 1844.

Syud Veilaet Ali Khan, Purchaser, Appellant, (Plaintiff,) *versus*

Ram Adeen Singh and 22 others, Vendors, Respondents,
(Defendants.)

THIS suit was instituted by appellant for a foreclosure under a conditional bill of sale of the whole villages Hurka Juswunt and Hurka Kulleean, purgunnah Merwa Kullian, zillah Turkee. Action laid at 1,257 rupees, 10 annas, being three times the annual revenue of the villages.

Purport of plaint. The defendant sold to him, under conditional bill of sale, the villages above-mentioned for the period of one year,

for the sum of Sicca rupees 1655; it is dated 22d December 1841, corresponding with 24th Agun 1249 Fuslee. Not having paid the money, application was made to the court under the XVII. Regulation of 1806, and ultimately directed to sue regularly for the foreclosure, &c.

. Answer of the defendants. These villages were sold at auction on account of arrears of revenue in 1247 Fuslee, and purchased by Syed Lootif Ali Khan for the sum of Company's rupees 8300. After the sale had been confirmed—arising from the high price paid for them, Syed Lootif Ali Khan requested the defendants to take back the property, and to refund the purchase money to him; application having been made to the collector, and the money having been obtained from the collectorate, he took back the purchase money, and wrote an acknowledgment of having received the money, and that the mutation of their names, the former, proprietors, should be recorded in the collectorate. We, the defendants, wrote a conditional bill of sale of the villages in the name of the plaintiff, the nephew of the auction purchaser of the villages, on account of the interest on that purchase money, calculated at the rate of 2 rupees per cent., amounting to Sicca rupees 1655; but to this day have not received any money on account of the conditional bill of sale. The tenor of the acknowledgment, that of causing their names to be recorded in the mutation book, has not been fulfilled.

Book Sahee and others, third parties, petitioned to this effect: The village Hurka Kullean was their ancestral property, of which they held 13 annas, 9 gundas, and 2 currants, portion, and the defendants 2 annas, 10 gundas, 3 cowrees and 1 currant. Agreeably to a special appeal decision passed by the Sudder Dewanny Adawlut under date 26th July 1827, they were put in possession of their portion. This property was sold for arrears of revenue, and at the request of the auction purchaser, the purchase money was taken back from the collectorate and paid over to him, and they were established in the property; and that they did not enter into the matter of the conditional bill of sale of the property.

The second principal sudder ameen passed a nonsuit decision on the grounds: Notwithstanding the witnesses of both parties have given their evidence to corroborate the allegations of their respective party; but under circular letter No. 20 dated 29th July 1809, fictitious purchase is a bar to the suit. This document being in lieu of interest on the auction purchase money, the principal person in the matter is Syed Lootif Ali Khan, the uncle of the plaintiff, whose name in the document is fictitious, which is proved by the evidence of two witnesses brought by the defendants, and whose names had been inserted in the plaintiff's list of witnesses, but were not pointed out.

Against this decision the plaintiff appealed, urging, that the circumstances of the conditional bill of sale, and the payment of the purchase money, were perfectly proved; and the enquiry into the circumstance, that the name of the plaintiff is fictitious for that of his uncle Lootif Ali Khan, is not justice—the matter was transacted with himself, in which Lootif Ali Khan had no concern. The two witnesses, Eshur Duth and Hurreeah Duth, from whose evidence the fictitious transaction is said to be proved, are relations of the defendants, and are in collusion with them, therefore they were not pointed out as witnesses on his part.

Answer of respondents. No money was paid to them, and the document was written in lieu of interest on the auction purchase money; the witnesses of the plaintiff who deposed to the money having been paid on the document, are servants of the plaintiff, the principal person is Lootif Ali Khan, and that of the plaintiff is fictitious.

COURT.

The respondents, in their answer to the original plaint, acknowledge the conditional bill of sale was written out in the name of the appellant, (plaintiff,) the nephew of the auction purchaser of the villages: hence the suit instituted by the person in whose name the instrument is written cannot be considered a suit under a fictitious name, falling under the meaning of the circular letter quoted by the second principal sudder ameen; consequently, the nonsuit is erroneous—therefore the decision passed by the second principal sudder ameen is reversed, and the case to be sent back for re-investigation, to be tried and decided under consideration of the merits of the case.

THE 13TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 576.

Regular Appeal from a decision passed by Syud Ushruf Hosain Khan, 2d Principal Sudder Ameen, Mozufferpore, dated 17th June 1844.

Shaik Tasudook Ali and twenty-one others, Appellants, (Plaintiffs,) *versus*

The Government, Achumhet Sahoo, Musst. Shah Bebee, *alias* Bebee Nunhee, Shaik Nadir Ali, Moonsiff of Madhapore, and four others, Respondents, (Defendants.)

THIS suit was for the reversal of an auction sale, possession of a portion, and mutation of their names in the records of the collectorate of 9 annas, 11 gundahs, 2 cowries, and 2 dhunts portion of the whole 16 annas, aslee mu daklee (or the original and all thereunto appertaining) of village Mudapore, pergunnah Burwarrah. Action laid at Company's rupees 2608, being three times the annual revenue thereof.

Purport of plaint. In the said village the plaintiffs held the above-mentioned share, and the defendants Musst. Shah Bebee, *alias* Bebee Nunhee, the wife of Nadir Ali, moonsiff, Bhya Lall and other proprietors, the other share of 6 annas, 8 gundahs, 1 cowrie, and 1 dhunt. In the collectorate the estate is known and recorded as a joint property. The revenue of the share of the plaintiffs was sent to Nadir Ali; and through the means of Kaseem Ali, his son, was paid into the collector's treasury. In 1248 Fuslee the proportionate share of instalment, payable by the plaintiffs, was sent to Kaseem Ali, whose receipt for the amount they hold, and was not paid by him into the collectorate. The village on account of balance of Company's rupees 228, was sold at public auction on the 22d of March 1841; purchased by Auchumhet Sahoo, the servant of Kunnye Chowdree, fictitiously for Shaik Nadir Ali. A petition was presented to the collector on the subject, who made enquiry thereon, and when the evidence of one witness Ramdyal Missir remained to be taken, made his report to the revenue commissioner, who confirmed the sale, and was affirmed by the Sudder Board of Revenue. After the sale Nadir Ali caused a bill of sale to be written out in the name of Musst. Shah Bebee, *alias* Bebee Nunhee. Nadir Ali wrote a letter to the merchant Gopaul Doss to make the purchase for him. This person's deposition was taken and the letter filed: the fictitious purchase is proved thereby. The sale was irregular, there being a surplus proceeds of sale arising from an auction sale of a portion of this village due to former proprietors, who had petitioned for the sum to be paid over and credited to the village, therefore the sale is liable to be reversed.

Answer on the part of the Government. After the auction sale several of the proprietors took back their share of the surplus proceeds of the auction sale, cannot sue for the reversal of the sale in conformity to 27th Section, 11th Regulation of 1822. With regard to the surplus proceeds of sale on account of satisfaction of decree of court of the share of Anund Jha and Bobeireeah Jha, former proprietors of the village, the sum of rupees 72-3 was recorded in their names, and not in the names of the plaintiffs. The malikana of the village Surryah Boozoorg, purgunnah Treesut, and of village Bundoolee, purgunnah Narpore, to which the plaintiffs allege a claim, and should have been brought to the credit of their estate, was not deposited in the treasury as such, that it could be carried to their credit: hence their allegation of the irregularity of the sale on account of arrears, is not correct. With the subject of the fictitious purchase no answer is required from the Government.

Answer of Auchumhet Sahoo the purchaser. The letter and the evidence of the witnesses, which the plaintiffs allege to have proved the fictitious purchase, were proved all false by the enquiry

of the collector, revenue commissioner, and the Sudder Board of Revenue; and the allegation of having forwarded the revenue to Kaseem Ali is also false: for, on the day of sale after it had taken place, Raja Missir, son of Nyal Missir, one of the plaintiffs, presented a petition, therein stating he was under charge of a peada of the fouzdarry, and the revenue had not arrived from the village. After the auction sale, the proprietors requested to re-purchase the village from him on a profit, for the sum of Company's rupees 6403-3-3. Musst. Shah Bebee having paid her quota, the share of 5 annas was sold to her: the others not being able to produce the purchase money, consequently no sale was effected with them.

Answer of Shah Bebee, *alias* Bebee Nunhee. The plaintiffs did not hold so large a portion of the village as set forth in the plaint—2 kists or instalments on account of 1246 Fuslee had been paid, no balance was due from her, the plaintiffs had not paid their portion—on sending the third kist, her own portion of 50 rupees, it was not taken, the auction sale having been made and purchased by Auchumhet Sahoo. The objections of the plaintiffs to the sale were all rejected to the termination of the Sudder Board of Revenue, and the sale confirmed. After the sale all the proprietors were desirous to re-purchase the village, not being able to pay the profits of the purchase money, it was not effected, with the exception of herself only—having paid the profit and the purchase money, 5 annas was sold to her.

Answer of Shaik Nadir Ali. While present at Muzaffurpore, the revenue of the village was regularly paid, which prevented the sale thereof. When he proceeded to Coylee, under apprehension, from the irregularity of the payment of revenue by the plaintiffs, that the village might be sold for arrears of revenue, which ultimately took place, a letter was written to Gopaul Doss: if the village should be put up to auction, on account of arrears of revenue, to purchase it, and he would purchase from him his 5 annas share: to make purchases from the auction purchaser is not forbidden.

Answer of Kaseem Ali. The plaintiffs did not forward the revenue to him, to be paid into the collectorate. One kist or instalment was sent by Musst. Shah Bebee, *alias* Bebee Nunhee, which was paid in; the other, second instalment of 50 rupees, was taken to the collectorate, being less than the amount due, for which the village was advertized for sale, was not taken.

The other defendants did not answer.

The second principal sudder ameen dismissed the case on the grounds: from the proofs adduced by the plaintiffs, the point of fictitious purchase has not been established. With regard to the irregularity of the sale for the surplus proceeds of sale of rupees 72-3, in deposit, one person only applied for its being carried

to the credit of the village. Regarding rupees 302-14-2 malikana in deposit in the treasury, to which there is no distinct allotment of share to the proprietors, there was no application from any one for that deposit to be carried to the credit of the village: and had it been reported these sums were in deposit, the revenue commissioner would not have confirmed the sale. But according to the 25th section, 11th Regulation of 1822, these objections cannot be listened to by the court, not being the conditions under which the court can reverse the sale.

Against this decision the plaintiffs appealed, urging: From the moonsiff's letter it is proved that, previous to the sale, he contemplated the fictitious purchase. From the acknowledgment on the part of the Government that there was a deposit; notwithstanding the sale took place: and on the enquiry of the revenue commissioner, the collector reported there was no malikana in deposit, which was incorrect, as that malikana was carried to the credit of another village.

COURT.

Auchumbet Sahoo, the purchaser of the village at the auction, sold on account of arrears of revenue, does not appear to have made the purchase fictitiously on account of any other person. It is true Nadir Ali moonsiff wrote a letter to Gopal Doss, merchant, but he did not purchase the village, nor is it to be inferred from the merchant's deposition, he was a sharer or an accessory to that purchase; hence the letter is no proof that the purchase was made fictitiously, nor do the other witnesses prove that fact. Judges writing to merchants to purchase land or other articles and to dispose of some articles they wish to get rid of, is not trafficking. The plaintiffs alleged there were two items in deposit in the collectorate, which should have been carried to the credit of the village. They were not, previous to, and at the time of sale, available for that purpose. The first item, the sum of rupees 72-3, surplus proceeds of sale in satisfaction of decree of court, appertained to two persons, one of them only petitioned, praying that sum might be carried to the credit of the village, and that was 9 or 10 months prior to the time the sale took place, and in the interval between the application and the sale, the village had been twice advertized for sale: the appellant did not apply for this sum to be carried to their credit but paid up at each time the balances prior to the day of sale; the sum belonging to two persons not proprietors of the village, on the application of one only, the collector could not legally transfer it to the credit of the village. With respect to the second item Company's rupees 302-14-2, malikana, had not been brought on the books of the collectorate as such, until some time after the sale, and after the report to the revenue commissioner, that it could be credited to the village in question: in fact, it was malikana of other villages. It is customary for the

maliks to make application for the payment or transfer of the amount to other estates, when it is enquired into by the collector. It is the bounden duty of the proprietors, whose estates are advertized for sale on account of arrears of revenue, to attend the collectorate and point out what miscellaneous sums they are entitled to, that the same may be carried to the estate advertized for sale: not having done so, the appellants must abide by the consequences thereof. In fact as the principal sudder ameen states, these are not any part of the conditions of irregularity, under which the court can reverse a sale on account of arrears of revenue. Under the above circumstances the decision of the principal sudder ameen is affirmed, and the appeal rejected with costs. The respondents having filed answers without being directed to do so by notice from the court, they must be at their own costs in this respect.

THE 17TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 870.

Regular Appeal from a decision passed by Syud Ushruf Hosein Khan, 2d Principal Sudder Ameen of Mozufferpore, dated 23d September 1844.

Baboo Sheehoobucksh Sing, Appellant, (Plaintiff,)

versus

Baboo Ajeetnarain Sing and two others, Respondents,
(Defendants.)

THIS was for the recovery of Company's rupees 1585-5, being the principal amount of expences incurred in the prosecution to the final decision of the suit, in which Cheedah Singh and another were plaintiffs *versus* the ancestor of Sheebnarain Singh defendant, for the proprietary right of the village Mirzanagur and other villages. In which case, the ancestors of the plaintiff and the defendants were a third party, and the case carried to the termination of decision by the Sudder Dewanny Adawlut. On adjustment of accounts, the expenditure was Company's rupees 3751-14, the half of which was payable by the defendants, having at different periods received the sum of rupees 290-2 being deducted, left the sum of Company's rupees 1585-5 due from the defendants, who signed an abstract account showing that amount of debt, &c.

Answer of Juggutnarain Singh and Seednarain Singh, denied the whole plaint. No adjustment of accounts took place, nor did they sign the accounts. In respect to the case to which the plaintiff alludes, was decided 16 years since.

Answer of Jeetnara Singh, the same as above. The second principal sudder ameen passed a decision of dismissal, on the grounds: although the copy of the accounts filed has been duly stamped, the original appears to have been mislaid or lost in the stamp office, and owing to the discrepancy in the evidence of the plaintiff's witnesses, the plaint was not proved. Against this decision the plaintiff appealed, urging that the original document had been submitted for the purpose of being stamped, for the loss thereof in a public office he was not blameable. There was not any discrepancy in the evidence of his witnesses, and his case was proved.

COURT.

On perusal of the original case there appears to be a discrepancy in the evidence of appellant's witnesses in the cross examination; and there being no point with a favourable tendency towards the appellant, I perceive no cause for altering the decision of the second principal sudder ameen, which is affirmed and the appeal rejected with costs.

THE 25TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 869.

Regular Appeal from a decision passed by Molovi Niamut Ali Khan, Principal Sudder Ameen of Tirhoot, dated 19th September 1844.

Hoolas Doss and Horul Doss, Principals and Guardians of Baboolall Doss, *alias* Nunnoo Doss, minor son of Rupneeduth Doss, deceased, Appellants, (Plaintiffs,)

versus

Muhunt Bhawase Geer, Vendor, Shaik Mohamud Reiza and Shaik Yar Ali, Purchasers, Respondents, (Defendants.)

THIS suit was for the right of pre-emption and mutation of their names in the records of the collectorate of 8 annas share of the whole 16 annas of village Tegra, purgunnah Jubdee, aslee mai daklee (or the original and all thereunto appertaining.) The action laid at Company's rupees 1119-7-6, being three times the annual rent.

The plaintiffs allege they are 8 annas sharers of the village Tegra, the other 8 annas share belonged to Muhunt Bhawase Geer, who leased it to their ancestor Rupneeduth Doss for 23 years, from 1245 to 1267 Fuslee, on an advance of rupees 1961. The muhunt, on the 17th of Maugh 1245 Fuslee, sold this share to Shaik Mohamud Reiza and Shaik Yar Ali for the sum of rupees 3000, on a conditional bill of sale, for the period of six months. On the expiration of the term, the purchasers made application to

the court under the 17th Regulation of 1806, and on the 16th of January 1844 obtained an order to sue regularly for possession. The plaintiffs, on hearing of this order, immediately sent the amount of purchase money and demanded the pre-emption from both the vendor and purchaser: the vendor asserting he had no concern in the matter; and the purchasers declaring the bill of sale was in the court, from whence they would obtain it in the course of 10 days, and make the same over to the plaintiffs.

The defendants Shaik Mohamud Reiza and Shaik Yar Ali, the purchasers, plead, that Horul Doss and Hoolas Doss have no concern in the village; Baboolall Doss is a sharer, but being a minor he is incapacitated to claim pre-emption. The other two plaintiffs were acquainted with the circumstance of the conditional bill of sale at the time it was executed: it was necessary they should then have made the claim of pre-emption. The defendants deny the plaintiffs claimed the right of pre-emption from them, after obtaining the order from the court under the 17th Regulation of 1806. The date on which the plaintiffs allege the right of pre-emption was claimed, Shaik Yar Ali was not at his residence but at Mozufferpore.

The defendant Muhunt Bhawase Geer, the vendor, filed no answer.

The principal sudder ameen dismissed the suit, on the grounds: the purchasers have not, as yet, sued the vendor to obtain possession; until a decision for the foreclosure of the conditional sale be obtained, a suit for the right of pre-emption cannot be maintained in conformity to a precedent filed in the case, being copy of a proceeding dated 27th January 1836, passed by the judge of Tirhoot, giving his opinion to that effect.

The plaintiffs appeal against the above decision, urging: the right of the vendor to the property was foregone on the expiration of the proclamation issued under the 17th Regulation of 1806; having instantly thereon claimed the right of pre-emption, their suit is admissible. In the proceeding which the principal sudder ameen has taken as a precedent for the dismissal of the suit, the judge does not order that, it is to be a customary usage not to permit a suit for right of pre-emption previously to a suit for a foreclosure. The decision filed as a precedent to their allegation was not taken into consideration.

The respondent Shaik Mohamud Reiza having died, his widow and heir, Musst. Ludwun, filed an answer. It is a repetition of the answer in the original case, with this addition: the evidence of the witnesses and the plaint differ regarding the date on which the purchase money was tendered and claim made for the right of pre-emption: the witnesses deposed it occurred on the 9th and 10th of Maugh 1251, and the plaint on the 14th of Maugh, showing thereby the falsity of the suit, &c.

The respondent Shaik Yar Ali filed a petition in which he declares he has no connexion in the case, having relinquished all right and title to the property to his sister-in-law, Musst. Ludwun, &c.

Subsequent to the institution of the appeal Muhunt Bhavase Geer died : his heirs have filed an answer : notice thereof is inadmissible, the muhunt having allowed the original case, as far as he was concerned therein, to go by default.

COURT.

The principal sudder ameen dismissed the case erroneously : for the grounds on which he did so, show it should have been merely a nonsuit. The two principal appellants, Horul Doss and Hoolas Doss, have not proved their right to claim pre-emption. First. From the collector's report, the mutation of their names as sharers in the village did not take place until the 11th of May 1844, nearly four months subsequent to the institution of the suit, which was on the 19th of January 1844 ; hence their tender of the purchase money and claim for the right of pre-emption, if ever made, was not legal, having no proprietary right in the village at that time. Secondly. Their witnesses deposed : subsequent to the purchasers obtaining the judge's order to sue for the foreclosure possession, the purchase money was tendered and the pre-emption claimed from the vendor on the 9th of Maugh, and from the purchasers on the 10th of Maugh. Now the judge did not pass the order under the 17th Regulation of 1806, for the purchasers to sue for possession, until the 14th of January 1844, which date, on looking over the kalendar, corresponds with the 11th of Maugh 1251 ; therefore the tender and demand was not subsequent, but prior to the judge's order one and two days ; and the plaint alleges the claim for the pre-emption was made on the 14th of Maugh, which tends to shew another difference and falsity in the evidence. How can such evidence be credited in a court ? Thirdly. The plaint alleges the purchasers declared, on the claim for the pre-emption being made, they would obtain the bill of sale from the court in 10 days, and make the same over to the appellants (plaintiffs) which is acknowledging the right of pre-emption. Without awaiting for the expiration of the time, or assigning any reason for not doing so, the suit appears to have been instituted on that very date, the claim for the pre-emption, as stated in the plaint, was made, viz. the 14th of Maugh. These all show a tissue of falsehood of the plaint and evidence. The claim for pre-emption cannot be maintained. The principal appellants have not shown under what circumstances they became guardians to Baboolal Doss, *alias* Nunnoo Doss, or whether there be no nearer relative to claim the guardianship of the minor ; who, although drawn into this case by the other appellants, the court cannot interfere in any way in this matter

respecting the minor's interests. Under the above circumstances, the appeal is dismissed with costs of both courts, and in a manner affirms the decision of the principal sudder ameen; with this amendment, the dismissal is not a bar to the interest of Baboolall Doss, *alias* Nunnoo Doss, minor.

THE 26TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 571.

Regular Appeal from a decision passed by Nadir Ali, Moonsiff of Bhowarah, dated 16th of July 1845.

Mohon Jha and five others, Appellants, (Defendants,)

versus

Jootun Misser, Respondent, (Plaintiff.)

THIS suit is for the recovery of Company's rupees 140-6, being amount of balance of rent and interest from 1244 to 1250 Fuslee, on half share of an under lease of 8 annas portion of village Gurwur, purgunnah Durwur. The plaint sets forth that Karee Misser and himself obtained from the proprietors of the village a lease of 8 annas portion of the said village for the period of seven years, from 1244 to 1250 Fuslee, on the rent of Sicca rupees 251, payable annually. On the same terms it was under-leased to the defendants. On adjustment of accounts at the termination of the under-lease, and after deduction of 4 annas portion on account of Karee Misser, the other lessor's share, a balance appeared against the defendants. Rent Sicca rupees 92-8, interest 39-2, total Sicca rupees 131-10, equivalent to Company's rupees 140-6, for which amount he sues.

Answer of the defendants. The plaintiff and Karee Misser are own brothers, they are not lessees but hold the land as bhamoter, or rent free land, for support of indigent brahmuns, this they leased to them. The share of rent payable to the plaintiff has been discharged, they hold adjusted accounts of payments for the year 1244 and 1245 Fuslee, and agreeably thereto the whole rents also have been discharged from 1246 to 1250 Fuslee, and there is a surplus due to them.

The moonsiff passed a decision in favour of the plaintiff, on the grounds that the defendants do not deny having taken the lease, and merely plead having discharged the rents, but to this moment have not adduced any proof thereof.

The defendants appealed against this decision, urging: the documents were sent to their attorney, who, owing to some of them being on plain paper, did not file them, being contrary to the regulations, but hoped they might be taken in this court. Karee Misser filed a petition as a third party: it is a corroboration of the

answer of the defendants in the original case. Musst. Khumul Preeah Bhawas filed a petition as a third party in corroboration of the plaintiff's plaint.

COURT.

On perusal of papers of the original case it appears the case has not been sufficiently investigated and the decision wholly erroneous; therefore the decision is reversed, and the case directed to be returned for re-investigation, to call on the plaintiff to file the lease by which he and his co-partner were empowered to under-lease the same portion of the village to the defendants; and also to file the kaboolet or counterpart of the lease given by the defendants on the under-lease to them. To ascertain whether the lease be written on a stamp of full value, and to establish the validity of the instrument by evidence of witnesses. To call on the defendants to file the under-lease granted to them; to ascertain whether it be written on a stamp of full value. The decision having been erroneously passed in awarding the plaintiff his claim, on the mere default of the defendants to adduce proof of their allegation that the rents had been paid; and without taking evidence of a single person on the part of the plaintiff, or calling on him to adduce proof of his claim, it will be necessary now to call on the plaintiff to prove his plaint by the evidence of witnesses. To call on the putwarree to produce the annual jumma wassie bakke, or accounts of demands, receipts, and balances for the years 1244 to 1250 Fuslee, both years inclusive. To ascertain from these accounts the correctness of the plaintiff's claim. Putwarree to be sworn to the validity of the accounts. The defendants to be called on again to prove the payments of the rents. After having re-investigated the case, to pass judgment according to the merits thereof. Amount of stamp of appeal plaint to be returned.

THE 27TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 589.

Regular Appeal from a decision passed by Moulvee Muneerooddeen Hoosein, Moonsiff of Muhwa, dated 7th of August 1845.

Sheonath Mhatoon and Juggernath Mhatoon, Appellants,
(Defendants,)

versus

Bhurosee Lall, the father and guardian of Sheochurn Lall and Kaleechurn Purshad, his minor sons, Respondent, (Plaintiff.)

THIS suit is for the recovery of Company's rupees 15-12-9, being balance of rent and interest thereon, on the cultivation of

1 beegah and 11 kuttahs of land in the village of Bishenpore, chuck Lalloo *alias* Bharaputtee, pergunnah Hajypore, on account of 1250 Fuslee. The plaint sets forth that Bhurosee Lall took a lease of the whole above-mentioned village, in the names of his minor sons, on account of 1250 Fuslee—from 1251 Fuslee the lease is in his own name—from Ramdyal Sing and others, the proprietors of the aforesaid village. The defendants being in balance on account of 1250 Fuslee, he sues for the same.

The defendants in their defence plead they do not cultivate any land belonging to the plaintiff. Sheodyal Mhatoon, his nephew, granted them 1 beegah and 5 biswas of land at an annual rent of 4 runees within his cultivation, and to whom their rent has been paid.

Sheodyal Mhatoon petitioned as a third party: it is a corroboration of the defendants' answer.

The moonsiff passed a decision in favour of plaintiff, on the grounds: the cultivation of the land, and the balance being due, having been proved by evidence of witnesses. The third party and the defendants are in collusion and are relatives. The receipts and puttah (or lease) filed by the third party are not genuine and not proved.

Against this decision the defendants appealed, urging: the plaintiff, respondent, held no document from them; the putwarree is a servant of the plaintiff's. Relationship does not constitute collusion, which was not proved. It was necessary to have deputed an ameen on the spot to ascertain the truth of their allegation, &c.

COURT.

The lease on which the respondent, plaintiff, can claim to sue is not filed, whereby the investigation is incomplete, therefore the decision is cancelled, and the case sent back for re-investigation. To call on the plaintiff to file the lease; to ascertain whether it be written on a stamp of full value, and to prove the validity thereof by evidence of witnesses. If it be not filed, to take into due consideration under such circumstance, whether a suit against the ryots (or cultivators) can be maintained, or a decree be given against them in favour of the plaintiff. After a full re-investigation to pass judgment on the merits of the case. Amount of stamp of appeal plaints, to be returned to appellant.

THE 27TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 603.

Regular Appeal from a decision passed by Nadir Ali, Moonstiff of Bhowareh, dated 5th of August 1845.

Mr. John Gale, Appellant, (Plaintiff,)

versus

Geerdharee Missir and Baboo Keerut Sing, Respondents,
(Defendants.)

THIS suit was instituted by the appellant to cancel a pottah or lease for 16 beegahs 5 biswas of land of the village Hurpore, pergunnah Hatee, and the reversal of proceeding passed by the session court dated 30th November 1842. Action laid at Company's rupees 8-2.

The plaint sets forth, Baboo Keerut Singh, the proprietor, granted to the indigo factory at Kynah a lease of the whole village above mentioned, under date the 11th of Bysack 1248, for the period of seven years, from 1249 to 1255 Fuslee. Leases were granted to and counterparts thereof were lodged by the ryots, but Geerdharee Missir, the defendant, would not enter into agreements with the factory, alleging the lease for his cultivation was granted by the proprietor of the village prior to the lease to the factory. This dispute was carried to the fouzdarry under the 4th Regulation: On investigation, the magistrate decided the defendant's lease void. On appeal, the session court reversed the magistrate's order, and upheld the defendant in his lease. Hence this suit. The lease of Geerdharee Missir having been granted subsequently to that granted to the factory.

The defendant Geerdharee Missir in his defence pleads, that the proprietor of the village granted him a lease for nine years, from 1248 to 1256 Fuslee, at an annual rent of 8 rupees, 2 annas. He holds a receipt for the payment of the rent on account of 1248 Fuslee, and a decree dated 10th December 1841 obtained against a ryot who had cultivated some land within his lease; and that Mohon Tagoor, the servant of the factory, did not at that time urge any objection.

Baboo Keerut Sing, proprietor of the village, in his defence urges the same pleas as the above defendant with this addition—it is stipulated in the lease to the factory, not to exact more rent from the ryots than that mentioned in the leases granted to them.

The moonsiff dismissed the case on the grounds: The plaintiff not having adduced other proof than the witnesses under his own influence, to prove that Geerdharee Missir obtained his lease subsequent to that granted to the factory. From inspection of the

defendant's lease, the proprietor's answer to plaint, and the evidence of the defendant's witnesses, prove it was granted previously to that to the factory.

Against this decision the plaintiff appealed, urging: the pottah or lease to Geerdharee Missir was granted subsequently to that to the factory, was proved by the evidence of the witnesses. The moonsiff did not take this into favorable consideration. The decision in favor of the defendants was obtained by collusion of the parties, the proprietor of the village and the ryot.

COURT.

The lease to the factory has not been filed, hence the investigation of the case is incomplete, therefore the decision is reversed, and the case to be returned for re-investigation. To call on the plaintiff to file the lease and the jumma bundy (or a paper containing a list of the ryots, quantity of land cultivated by each, and the rent payable by each ryot) granted to the factory. First to ascertain whether the lease be written on a stamp of full value. To prove the validity of one, or the other, or both documents, if any objection be urged against them. To call on Baboo Keerut Singh to file kaboolet (or counterpart of lease) given by the factory to him. To compare the two documents, lease and counterpart, to ascertain if they correspond with each other, and to ascertain from them, whether there be any stipulation that the factory was prohibited to exact more rent than that specified in the leases to the ryots, and to ascertain from the jumma bundy paper (or list of the ryots, their land, and rent payable by them) whether name of Geerdharee Missir be mentioned therein, the quantity of land cultivated by him, and the annual rent payable by him, which will elucidate the matter of the present dispute. After careful re-investigation, to pass a judgment in conformity to the merits of the case. The amount of stamp of appeal plaint to be returned, &c.

THE 28TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 622.

Regular Appeal from a decision passed by Moulvie Syud Mahomed Wahidoodeen, Moonsiff of Mozufferpore, dated 12th August 1845.

Muhunt Bhurut Doss, farmer, and Jyeraje Teewaree, security,
Appellants, (Plaintiffs)

versus

Beehook Rae and 3 others, Respondents, (Defendants.)

THIS suit is for Company's rupees 41-8-9, rent and interest, due for 125½ Fuslee on a cultivation of 17 beegahs, 15 kuttahs, in village Purkotumpore, purgunnah Beesarah.

The plaint sets forth, the whole of the above village was leased to the plaintiffs by Kishen Mohun Mookerjah and others, proprietors thereof, from 1251 to 1257 Fuslee. On obtaining the lease, proclamation under the 5th Regulation 1812 was issued, directing the ryots to attend and take out pottahs, or leases. The defendants having cultivated the land without taking out a lease, they are sued for rent at the rate of the village, &c.

The defendants plead: they are kadeem kashtkaran (or cultivators of very long period) of the village, and hold 16 beegahs and 19 biswas of land at different rates, making the aggregate annual rent 32 rupees and 3 annas, which has been continued to be paid to the former farmers to 1250 Fuslee, and agreeable thereto payment has been made to the amla or officers of the plaintiffs. The plaintiffs issued their proclamation in the months of Assin and Kartick 1251 Fuslee, which was not proper. The moonsiff passed a decision in favour of the plaintiffs; the rent payable at the former rates: as the Regulation directs the proclamation should be issued in the month of Jait, and the plaintiffs did not issue the proclamation until the commencement of Assin. After deduction of rent paid, there is a balance of rupees 1-2-7, due to the plaintiffs.

Against this decision the plaintiffs appealed, urging: It is mentioned in the 5th Regulation of 1812 that the proclamation is to be issued in the month of Jait or previously thereto, hence the issue of proclamation prior to Jait is not prohibited, and the moonsiff's decision is incorrect.

COURT.

It appearing from the the 9th section, 5th Regulation of 1812, the proclamation or notice to be issued to the ryots to attend for the adjustment of enhancing rates of rent should be issued in the month of Jait, and the increase not to take effect until the commencement of the ensuing year, hence the moonsiff's decision is perfectly correct. The appeal is rejected with costs, and the moonsiff's decision affirmed.

THE 28TH AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 623.

Regular Appeal from a decision passed by Moulvie Syud Mahomed Wahidooddeen, Moonsiff of Mozufferpore, dated 12th August 1846.

Muhunt Burrut Doss, farmer, and Jyeraje Teewaree, security,
Appellants, (Plaintiffs,)

versus

Doorga Taqoor, Respondent, (Defendant.)

THIS is a similar case to No. 622, with the exception of the defendant's name and the amount sued for being Company's

rupees 26-5-10, the decision of the moonsiff being on the same grounds as in No. 622, the amount decreed being Company's rupees 2-8-4-4, and this court passed a similar judgment as in that case.

THE 31ST AUGUST 1846.

PRESENT: JOHN FRENCH, ADDITIONAL JUDGE.

No. 714.

Regular Appeal from a decision passed by Molvie Syud Wahidoodeen, Moonsiff of Mozufferpore, dated 20th August 1845.

Bhekdarry Sahee and Mohore Sahee, Appellants, (Plaintiffs,)

versus

Jugmohun Lall, Respondent, (Defendant.)

THIS suit was instituted for reversal of a summary decision passed by the collector of Tirhoot, on the 10th of September 1844, on account of arrears of rent for the year 1251 Fuslee. Action laid at Company's rupees 105-15-9, being the amount of decree and costs of suit thereon. The plaint sets forth: the whole village Silwunt Basdeib, chuckla Nye, pergunnah Beesarah, was leased to the plaintiffs on an annual rent of Sicca rupees 424, for the period of 7 years, from 1250 to 1256 Fuslee. Gowree Sunker, a four anna sharer, not having signed the lease, the plaintiff was put in possession of 12 annas portion only in 1250 Fuslee. The rent payable to the defendant on account of 1251 Fuslee was discharged by 34 rupees on receipts, 27 rupees without receipts, and a mangoe orchard sold to him for 45 rupees; total making rupees 106. Notwithstanding, he sued in a summary suit for rupees 101-7-9, as principal and interest of rent due on account of 1251 Fuslee. The collector exempted the surety and passed an *ex parte* decree against the plaintiffs, without issuing the requisite proclamation for the attendance of the plaintiffs to defend their case.

Answer of the defendant alleges, Hurreeah Sahee, one of the sureties, caused the lease to be written out in the names of his son and nephew. The rent for 1250 Fuslee was paid by him, and the account of payments was taken by him. In the summary suit he acknowledged the payment of 12 rupees, 3 annas, and obtained receipt for the same. The transactions of the collections and payment of the rent rest with him, therefore the objection of the plaintiffs, that the proclamation for their attendance was not issued, is not to be listened to by the court. The whole of the plaint regarding the payment of the rent on account of 1251 Fuslee is incorrect: with the exception of 12 rupees, 3 annas noticed above, no further sum was in any way paid on account of that year.

The moonsiff dismissed the case on the grounds : the plaintiffs had not filed the receipts, payments of rents without receipts not being admissible in court, and there being no other point in the summary suit in any way favourable for the reversal.

Against this decision the plaintiffs appealed, urging : the collector did not issue a proclamation for their attendance to defend the suit, therefore the decree against them is contrary to the customary usage, and liable to be reversed. The evidence of their witnesses proved the payment of the rent.

The primary enquiry in the original case has not been effected ; which should have been to ascertain whether or not a proclamation requiring the attendance of the plaintiffs in this case, and defendants in that summary suit, was issued in conformity to the customary usage of the courts, or under the 3d clause, 18th section, 8th Regulation of 1819. It is not to be gleaned from the collector's decision. The summary suit not being filed, from whence alone the truth can be obtained, hence the moonsiff's investigation is incomplete, therefore the decision is reversed, and the case to be sent back for re-investigation. To call on the collector to transmit the summary suit alluded to. To file the same on the records of the regular suit in conformity to the 10th section, 14th Regulation of 1824, then to ascertain from the summary suit whether the proclamation above alluded to was or was not issued. To take into due consideration whether the collector is upheld by the circumstances shown in the summary suit, or by any Regulation, in passing an *ex parte* decision against the plaintiffs, defendants in the summary suit ; if so, the plaintiffs having allowed that case to go by default, can they institute a suit, in fact appeal against the collector's decision under the circular order No. 964, dated 12th of March 1841 ; then to pass judgment according to the merits of the case. Amount of stamp of appeal plaint to be returned to appellants, &c.

THE 31ST AUGUST 1846.

PRESENT : JOHN FRENCH, ADDITIONAL JUDGE.

No. 759.

Regular Appeal from a decision passed by Molvi Syed Azim Ali Khan, Moonsiff of Dulsing Surrai, dated 24th September 1845.

Chaterdhary Singh, Appellant, (one of the Defendants,)

versus

Pharun Singh and Purshun Singh, Respondents, (Plaintiffs.)

In this case the plaintiffs sued partly as proprietors and partly as lessees in the two villages, viz. Dooloor, in which they held 4 annas and 10 gundahs portion, and in village Umtawan, 2

annas and 5 gundahs portion, both villages appertaining to talooqah Mhusondah, pergunnah Sureisa.

In both villages the defendants, Chaterdhary Singh and Tillokdhary Sing, cultivated lands under bhowlee or kind rent, and they carried away the whole produce after it had been estimated. The proprietor's portion thereof was Company's rupees 32, for which sum on account of 1250 Fuslee the suit is instituted.

Answer of Chaterdhary Singh, one of the defendants, pleads that Tillokdhary Sing, the second defendant, has no concern in this case. The rent on the quantity of land cultivated under bhowlee or kind rent in the proprietary and lease puttee of the plaintiffs, has been entirely discharged, and receipt thereof in his possession. In 1251 Fuslee the bhowlee land or kind rent cultivation was relinquished.

The moonsiff passed a decision in favor of the plaintiff, on the grounds: the evidence of the plaintiffs' witnesses proved the cultivation and the balance of rent due.

The defendant not having brought the putwaree who signed the receipt, which is filed, has not proved the validity thereof.

Against this decision, the defendant appealed, urging: copy of the putwaree's deposition was filed in the case, which authenticates the receipt: to cause the putwarree to give another deposition is unnecessary: contrary to the matter adduced in the case, a decision has been passed in favour of the plaintiff.

COURT.

The deposition of the putwarry, filed in this case, has not the slightest allusion to the payment of the rent, or the writing of the receipt: it is a mere deposition to prove what portion or share a certain proprietor held in the talooqah. The evidence of the defendant's witnesses cannot be credited, arising from the contradictions in their evidence. Under these circumstances there is no cause for altering the decision of the moonsiff, which is affirmed, and the appeal rejected with costs.

ZILLAH TWENTY-FOUR PERGUNNAHS.

THE 3RD AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

*Appeal from the decision of Roy Hurchunder Ghose Bahadoor,
Principal Sudder Ameen, passed on the 29th of July 1845.*

Frances Morell, (former Defendant,) Appellant,

versus

Henry Burkinyoung, (former Plaintiff,) Respondent.

FOR an order to open a passage on a former road. Suit laid at rupees 1125.

Plaintiff states that he obtained a “mouroosce” pottah, or hereditary lease, from Nowab Hissam Jung, for five beegahs of land on the 22nd of Srabun 1247, for which he is liable to a rent of rupees 150 per annum. The land is situated in the “khass bagh” of the nowab, at Chitpore on the banks of the river Hooghly. The lease specified (plaintiff states) that the plaintiff was not to interfere with the road leading along the boundary of the land towards the north, which is particularised in plaintiff’s pottah as being six cubits in breadth. Plaintiff, having obtained the pottah, erected a mill on the ground. Subsequently, on the 9th of Pose 1250, Mr. T. P. Morell, now deceased, son of the defendant, obtained a pottah for land to the north of the plaintiff’s tenure. After Mr. T. P. Morell’s decease, his mother Frances Morell, the defendant, and her attorney, obtained possession of that ground. Plaintiff states that they are erecting a dwelling house on that land, and, in the month of Assar, built across the road (referred to by plaintiff as passing through, or along his land, from south to north) near plaintiff’s mill; and the defendant has thereby cut off the communication of plaintiff’s land and mill from the main road, and prevented the access of carts and workmen to plaintiff’s mill.

The plaintiff states further that he had applied for redress to the magistrate according to Act IV. of 1840, but no order could be passed by that authority as the period, by section 6 of the Act, which authorises a magistrate’s interference, had expired.

The defendant states in answer that her son’s name was inserted in the pottah, which was granted to her by Nowab Hissam Jung.

She denies that any road had existed as asserted by plaintiff, previous to her erecting the wall described by him. She refers to the plan filed in this case by the plaintiff, which she states was prepared on information furnished by the plaintiff's relations; and she states that a plan of the ground which she puts in, and which was drawn out by the surveyor, Mr. Rowe, in 1843, is a correct one. Further she urges that the plaintiff has access to the main road by a way, leading from the southern aspect of his premises to Baugh Bazaar; and that for ten months no objections were made to the erection of the wall she has built.

Nowab Hissam Jung, who was made a defendant in this case, did not file any answer.

The principal sudder ameen, having satisfied himself by a personal inspection of the spot, and taken evidence on both sides, passed a decree in plaintiff's favor.

Appellant appeals from this decision, urging that the plaintiff could not properly bring this action, as there was another partner in the business carried on by him, and as the pottah, for the ground leased, was granted in the name of plaintiff and Charles James Burkinyoung. She states that the magistrate of the 24-Pergunnahs, by whose opinion (recorded in his proceedings held in the case tried according to Act IV. of 1840) the principal sudder ameen was in part guided in coming to a decision in respondent's favor, though he saw that the road had existed, yet observed that it had been closed for a long time. Appellant states that the report and map, (drawn out by the overseer deputed for that purpose by the magistrate,) on which the principal sudder ameen relies, were made out from enquiries from the respondent's relations and dependants. With regard to the opinion, stated in the principal sudder ameen's decision, that the appellant's pottah contained a condition rendering it obligatory on her to keep open the communication, that condition does not refer to the road in dispute, but to another road. Appellant with her petition of appeal files a copy of the map drawn by Mr. Michael Crowe, surveyor, in 1843, which shews that no road, as contended by the respondent, existed.

Respondent in answer states among other matters that his brother Charles James Burkinyoung, in whose name, as well as respondent's, the pottah was granted, died previous to this action being brought, and he now is the deceased's representative.

In support of plaintiff's, respondent's, case the witness John Alfred Burkinyoung, his nephew, deposed that the road did run as stated in the plaint; that he, the witness, had subsequent to the erection of the mill driven his buggy over the road up to the mill. He states that the passage is now stopped up. Henry Mornay, adduced by plaintiff, deposes to the road having been open—to his

having frequently driven his buggy over it when in charge of plaintiff's mill, and he states that hackeries and carriages frequently passed to and fro, thereon. This witness says that very great injury accrues to plaintiff's mill by the stoppage of the road: and that there is no other feasible passage to the mill. William Roberts corroborates the foregoing evidence. This witness states that there is a lane, towards the south, which communicates with the road in dispute, but it is not such a passage that loaded hackeries or carriages could pass over. William Henry Hammerton (respondent's father-in-law) deposes that he has driven in his buggy over the road before and subsequent to the erection of the mill, and that he never travelled to the mill by any other. Thomas Place deposes that he was the engineer who built respondent's mill, and he frequently had seen hackeries conveying the building materials and machinery pass along the road into the mill yard. This witness states that the approach to the mill from the south is in a very bad state, and dangerous from its proximity to the river. Madhub Chunder Ghose deposes to the appellant's building across the road, and says he has seen the road in existence for seven years.

For the appellant, the surveyor, J. Rowe, who made a survey in 1843 of the ground leased to her, deposed that he did not then see any trace of the road. The plan drawn by this witness is much less comprehensive than that filed on respondent's part, which was drawn out by the overseer deputed by the magistrate. Another witness of appellant, Fucker Mahomed, deposed to there being no road as stated by the plaintiff; and from this witness's deposition it appears there was no approach for conveyances up to the mill by any road. He says no carriage could approach from the south. Another witness of appellant, Nukoo Matha, contradicts this; he says that the road, which appellant is alleged to have stopped up, never existed, but that the approach, by the south, from Baugh Bazaar, was passable for carriages. Ununtoram, for appellant, deposed that the road from the south to the north along the river side, never existed. The approach, he said, to the mill, was by the road leading from the south, which was passable only for coolies with their burdens.

Appellant's last witness, by name Allum Sheik, deposed that the approach to the mill was from the south only; and that the road did not continue towards the north, as stated by plaintiff.

With reference to this appeal, it appears to me that there is no objection to the plaintiff's, respondent's, bringing this action singly. His brother, in whose name the pottah is also granted, could not be aggrieved by the suit instituted by the plaintiff with a view of benefitting their common property. But it is a fact that the

respondent's brother is dead, and this is pleaded, by the respondent, as the reason of his not bringing the action, under Act IV. of 1840, within the prescribed time; for the respondent states that in consequence of the death of his brother the affairs connected with the property at Chitpore were, for a time, in confusion. As regards the building of the wall, it is not denied by the appellant; and the witnesses on both sides prove that the wall was built across the road. The respondent's witnesses distinctly state that they had been in the habit of going over the road in dispute in carriages on several occasions. And they say the mill is unapproachable for conveyances from the south. The magistrate, who, pending the decision of the case under Act IV. of 1840, visited the disputed ground, records in his proceedings that the trace of a road was perceptible; and the plan drawn by the overseer who, by the magistrate's order, sketched the ground and approaches, shows that the road had existed, across which now the defendant has built. The principal sudder ameen, who visited the ground, also records his opinion that there are the remains of a former road. With the exception of Mr. Rowe, I do not consider the witnesses for the appellant, who deposed in the lower court, of such character and respectability that their evidence ought to preponderate over that given by the respondent's witnesses. Indeed the general tendency of the appellant's witnesses' depositions, goes to show that there was no approachable passage up to the mill; and it is absurd to suppose that any party would erect an expensive building and machinery on a spot without having a good approach to the place. I cannot consider Mr. Rowe's, the surveyor's, evidence of such a nature as to outweigh the direct testimony in plaintiff's, respondent's, favor given by his witnesses.

With respect to the plan filed in appeal by the appellant showing that no road was on the land, as stated by respondent, I consider that plan of little avail in appellant's favor. For Mr. Crowe, who drew the plan and surveyed the ground, in his deposition taken in appeal, says there might have been a bye road (and plaintiff, respondent, contends for no other) on the land, and still it need not have been included in his map. Considering therefore the evidence, plan of the magistrate recorded in his proceedings under Act IV. of 1840, the decision of the lower court come to after a careful investigation and a personal inspection of the ground, as well as the conditions in the pottah of the respondent and also in that of the appellant (referred to in the principal sudder ameen's decision and in appellant's petition of appeal,) I dismiss this appeal, and direct that the passage, as ordered by the principal sudder ameen, be opened.

THE 3D AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Roy Hur Chunder Ghose, Additional Principal Sudder Ameen, passed on the 22d of July 1842.

Collector of 24-Pergunnahs, (former Defendant,) Appellant,

versus

Ram Kunmul Mookerjee, (former Plaintiff,) Respondent.

THE commissioner of the Soonderbuns and Cassynath Bannerjee were made defendants in the lower court, but are not included as respondents.

For possession of 397 beegahs of land, valued at 1588 rupees.

The plaintiff's case had first come on before the former principal sudder ameen, Roy Radagovind Soom, who dismissed it, because it appeared to him that the plaintiff had not instituted the action within the period allowed by section 24 of Regulation II. of 1819.

The plaintiff appealed from that decision, and on hearing the appeal it appeared to me that, as the plaintiff had only purchased the estate of Assapoor (in virtue of which purchase he claimed this land) shortly previous to the institution of the action, there was sufficient cause shown for his not instituting it within the year prescribed by the Section cited by the principal sudder ameen. I therefore reversed his decision and desired him to try the case.

The then additional principal sudder ameen, above named, proceeded with the trial.

Plaintiff states that he purchased the estate of Assapoor, pergunnah Hutteeaghur, containing, among others, the mozah of Damoodurpoor, from 397 beegahs of which, he states, the collector of the 24-Pergunnahs has dispossessed him, on the plea that it was a portion of mozah Ram Tunno Nugger, which, to the extent of beegahs 571, 15 biswas, was declared liable to assessment according to Regulation II. of 1819; whereas the plaintiff stated that land does not in reality exist, but has been carried away by the river Boora Muntisser.

To recover this the plaintiff brings this action against the collector; the commissioner of the Soonderbuns; and Cassynath Banerjee, (son of Byrub Chunder Banerjee, defendant in the resumption suit,) with whom a settlement had been effected for the land—but, as Cassynath did not fulfil the conditions of settlement, the collector took the land into his khass management.

In answer the collector urged that the land claimed by plaintiff was not part of Damoodurpoor, but of Ram Tunno Nugger. That the former talookdars of Damoodurpoor had not put forth any claims to this land, and that the plaintiff could not now do so,

as the law made the confirmation by the Board of Revenue of the resumption decision final, under the circumstances of this case. And according to that decision a settlement was effected with the defendant Cassynath. The commissioner of the Soonderbuns considered it needless to answer, as the collector had done so.

The other defendant, Cassynath Banerjee, answered that the land truly pertained to Ram Tunnoo Nugger, and was part of that decreed to be liable to assessment under Regulation II. of 1819. Defendant states he had at one time effected a settlement with Government for it, but eventually relinquished it.

The additional principal sudder ameen decreed the land to the plaintiff. He considered plaintiff's claim good, from the proof afforded by a decision passed according to Regulation VI. of 1813, and by the ameen's report in that case, as well as by copies of roobikarries of the commissioner of the Soonderbuns, and of the special commissioner, and by an English report, submitted by the former authority to the commissioner of revenue.

The additional principal sudder ameen held the defendant Cassynath Banerjee liable to defray plaintiff's costs.

Appellant appeals, urging that the decision passed according to Regulation VI. of 1813, having been only for 190 beegahs, neither it, nor the ameen's report in that case, could affect the action under trial which is for 397 beegahs, 15 biswas. He urges, further, that the roobikarries and letter referred to, were written without any personal inspection of the land, whereas appellant urges that a full report, after such inspection, was made by the assistant collector, showing the land, now litigated for, to belong to the resumed land in Ram Tunnoo Nugger. Appellant moreover submits that Section 24 of Regulation II. of 1819, rendered it illegal for the respondent to bring this action, as more than a year had elapsed from the date of the Board of Revenue's decision confirming the resumption of this land. Finally, appellant prays for the deputation of an ameen to report on, and map, the land.

This prayer was acceded to, and the local ameen submitted his report and plan of the ground in dispute on the 6th of May last. He made out the land to belong to Ram Tunnoo Nugger.

As it was desirable to check and compare the ameen's report and plan, with the map of Captain Prinsep and of Mr. Hodges, (referred to in the assistant collector's letter of the 2nd of April 1835, para : 9,) and with the field book of Captain Prinsep, in the office of the commissioner of Soonderbuns, the surveyor of that tract was desired to attend and give his deposition on oath regarding the correctness of the ameen's plan. That plan shows the land of Ram Tunnoo Nuggur to exist on the banks of the river Booro Muntisser, which forms the western boundary of Ram Tunnoo Nugger, the eastern boundary being an embankment, according to the ameen's plan, se-

parating the lands of Ram Tunnoo Nugger and Damoodurpoor, called Mr. Ferkins's embankment. The ameen's plan describes the northern boundary of Ram Tunnoo Nugger to be the lands of Anund Nugger, and, on the south, the boundary is the land of Saam Nugger, and of Kisten Chunderpoor. Thus, according to the ameen's plan, the lands of Ram Tunnoo Nugger intervene between the lands of Damoodurpoor and the river Booro Muntisser. The surveyor of the Soonderbuns, who brought with him Captain Prinsep's map and field book, deposes that the ameen's plan is correct with the important exception of the land said to be Ram Tunnoo Nugger, which is no where noted in the field book, or laid down in the map. It is clear that Ram Tunnoo Nugger cannot have been omitted in the map of Captain Prinsep from error, as the boundaries of the land of Damoodurpoor are the same in that map as the ameen puts down as the boundaries of Ram Tunnoo Nugger. Moreover the report of the commissioner of the Soonderbuns dated the 24th of November 1832, addressed to the commissioner of revenue, is unfavorable to the Government claim. Therein it is stated that the lands of Ram Tunnoo Nugger decreed to Government, are being carried away by the river Booro Muntisser, or the Hooghly. Mr. Hodges' map was not produced, though several times called for, and appellant's pleader states that it cannot be found.

As regards the plea that the the respondent's suit could not be heard in the civil court, as he did not institute it within a year after the decision of the Board of Revenue (according to Section 24 of Regulation II. of 1819,) had been passed, that was disposed of on the 16th of March 1842, when I remanded this case for retrial. I observe the Board's decision was passed on the 4th of June 1824. In their letter to the commissioner, dated the 20th of July 1835, para: 2, this respondent is referred to the civil court to have his claim decided; and as the Sudder Board thus coincide with me, I am the more confirmed in the opinion that legally a civil court could try this case. Besides, the order remanding the case for trial was passed in 1842, and I could not now reverse that order, even if it were erroneous. Had it been so, I think, the appellant ought to have appealed to the Sudder Court, instead of now seeking for its rescission by the authority who passed it. In the original resumption decree, under Regulation II. of 1819, passed on the 19th August 1822, there are no boundaries, whatever, laid down of the land declared liable to assessment. Considering the vague terms of the decree, and the surveyor's deposition, which shows the land of Ram Tunnoo Nugger not to have existed when Captain Prinsep's map was made in 1822, the year in which the resumption decree was passed, I do not think that the land claimed by Government does belong to Ram Tunnoo Nugger, notwithstanding

the ameen's plan and the assistant collector's report, which however is made many years after the map and the decree. In order to make it appear that it was the intention of Captain Prinsep to omit the lands of Ram Tunnoo Nugger from his survey in 1822, a copy of an order passed by the commissioner of the Soonderbuns, dated the 4th of March 1823, was put in, wherein the commissioner of the Soonderbuns would not permit the land of Ram Tunnoo Nugger to be surveyed. This does not in my opinion show any thing in appellant's favor, for the spot laid down by the local ameen (deputed when this appeal formerly was taken up) as Ram Tunnoo Nugger, appears from Captain Prinsep's survey and the surveyor's depositions to be distinctly the land of Damoodurpore. In order that no misapprehension may exist as to the date of the survey by Captain Prinsep, or of its having taken place in 1822, (the same year that the resumption decree was passed,) I wish to remark that that fact is ascertained from the copy of the petition of Byrub Chunder, on which is written the above order by the commissioner of the Soonderbuns, and which is filed by the appellant.

The additional principal sudder ameen had saddled Cassynath Banerjee the defendant with plaintiff's, respondent's, costs; it would appear because he, witting that the land pertained to Damoodurpore, effected a settlement of it with Government. Cassynath by petition now prays to be released from this liability, and respondent in an answer to the urzee of appeal prays to have an order passed that Government, as the richer party perhaps, may defray those costs, but I see no reason to interfere with the award regarding costs. Considering therefore that there is no reason, under the circumstances I have referred to, to disturb the additional principal sudder ameen's decision, I dismiss this appeal holding appellant liable for the costs therein.

THE 11TH AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Syed Oosman Ally, Additional Principal Sudder Ameen, passed on the 23rd of December 1845.

Govind Chunder Photadar, (former Defendant,) Appellant,
versus

Raj Chunder Soor, (Pauper, former Plaintiff,) Respondent.

FOR rupees 1750, price of ganjah.

Besides the appellant there were sued Takoorannee Dossee, Koontee Dossee, Joomah Khan, Romjan Khan, Woolfut Khan, Pertaub Mooteah, and Rajoo Chaprassee.

The plaintiff stated that he sent Kala Chand Ghose, his servant, to Dinagepore to purchase ganjah for him, plaintiff; he remitted to

him, at different times, for that purpose, rupees 487, 12 annas. Kala Chand, plaintiff states, therewith bought thirty two bundles of ganjah containing 70 maunds, and brought it by boat down to Tolly's Nullah, when without plaintiff's knowledge he landed it at Joomah Khan's house in Bowanypoor; thence it was taken and sold in Calcutta, in Jaun Bazar, during the month of Chyite 1243 B. S. Plaintiff states that he complained at the police office, where Kala Chand admitted having received the plaintiff's money; and also admitted purchasing and conveying the ganjah to Tolly's Nullah: but pleaded that plaintiff owed him wages. On this arbitrators were appointed to settle the matter. The defendants did not attend, and the plaintiff was referred to a regular suit. The ganjah, plaintiff alleges, was worth, during the month of Chyite 1243, 25 rupees per maund, and at that rate seventeen maunds is worth 1750 rupees which now plaintiff claims.

Of the defendants only Romjan Khan and Takoorannee Dossee gave any answers. The former person stated that he had nothing to say to the disposal of plaintiff's ganjah. He, Romjan, says that Govind Chunder Photadar landed the ganjah with the aid of plaintiff's people, who can have no claim against him. Takoorannee Dossee stated that she was the mother of Kala Chand Ghose, who, having brought the ganjah from Dinagepore, placed it first in Joomah Khan's house, then placed it at the disposal of Govind Podar, or Photadar. And on plaintiff's complaining at the police office in Calcutta, about which time Kala Chand died, Govind Podar sold the ganjah, and, after doing so, offered to compromise the case with the plaintiff. This defendant states that she has nothing to say to the estate of her late son Kala Chand, and ought not therefore to be sued by plaintiff. The jowabul jowab, or replication of the plaintiff, only refers to the answer of the defendant Romjan Khan, and points out that that person admits his claim, and prays for investigation.

On the 6th of March 1843, the late principal sudder ameen, Roy Hurrinarrain Ghose, dismissed plaintiff's claim for want of proof.

On this award being passed the plaintiff appealed to the additional judge of this zillah. That authority, on the 9th of September 1844, returned the case for retrial, (the principal sudder ameen having only heard the evidence of two witnesses,) and in order that the evidence of omlah of the police, might be taken, and that the book of entries of ganjah passes kept in that office, might be inspected.

The additional principal sudder ameen, Syed Oosman Ally, having then tried the case, did not succeed in obtaining any book from the police office. He heard the evidence of two of the omlah of that office, and decreed the case against the defendant

Govind Chunder Photadar, and held the estate of Kala Chand Ghose also liable for plaintiff's claim.

Against this decision Govind Chunder appeals, stating that he had nothing to say to the ganjah said to have been disposed of, and that he was ignorant that any action had been brought against him, no notice thereof having been signified to him.

I refer to the notice issued through the sheriff of Calcutta on the defendant, appellant. The sheriff certifies that he did cause the notice to be served on Govind Chunder Photadar, the appellant. The statements in the plaint are noted exactly by me, and it seems to me impossible for this appellant to answer so vague and unintelligible a plaint. His, appellant's, name is inserted with the names of several others at the head of the plaint, as defendant; but how, or where, or when, he (or the greater part of those persons) incurred any liability to be held responsible for plaintiff's claim, is not stated in, or in any way to be gathered from, the body of the plaint, nor is this appellant's name ever mentioned therein. Such a plaint, in my opinion, is at variance with the intent of Section 3 of Regulation IV. of 1793, and I consider that the case ought to be nonsuited, which I accordingly order it to be, and decree this appeal. The plaintiff, respondent, to be held liable for costs as far as can be.

THE 11TH AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Roy Hurchunder Ghose, late Additional Principal Sudder Ameen, passed on the 24th of June 1844.

Sama Soondree Debea, (Pauper, former Plaintiff,) Appellant,

versus

Bhobo Soondree Debea, Kaidernauth Mookerjee, and Raja Radacant Deb Bahadoor, (former Defendants,) Respondents.

FOR $\frac{1}{3}$ d share of 80 beeghas, 5 kottahs, of keraj and lakeraj land, and of a house, tanks, trees, &c., situated at Nowabgunge, Pultah, with wassiluat.

Plaintiff stated that her husband Joyenarain Mookerjee inherited property with other sons of Ram Persaud Mookerjee from their father. Her husband died, and then her brother-in-law, Gunganarain Mookerjee, husband of the defendant Bhobesoondree, and her nephew, Kaidernauth Mookerjee the defendant, the surviving successors to Ram Persaud's estate, dispossessed her of the property she held as Joyenarain's widow. And she now prays for re-possession with wassiluat, or mesne profits.

In answer Kaidernauth only stated that the plaintiff never had been dispossessed of any of her property. That at the time of the alleged dispossession he, Kaidernauth, was a child of 7 or 8 years old. He says that the plaintiff still has possession of the estate she succeeded to from Joyenarain, her late husband.

The additional principal sudder ameen did not consider that the dispossession was proved, but was of opinion that the evidence of the defendant Kaidernath's witnesses proved that the plaintiff was still in possession of her property. He therefore dismissed her suit.

Rajah Radacant Bahadoor had merely been sued as he was zumeendar of a portion of the keraj land under litigation.

Sana Soondree appeals from this decision, praying that further evidence might be taken regarding her statement that she was dispossessed of her property. After hearing the evidence taken in the lower court, at the last sitting in this case appellant's prayer was granted, and she now has caused the attendance of two witnesses only. She has taken no steps to secure the presence of others named by her. The witnesses Necloo Sirdar, Goluk Bagdee, and Edoo Sheik deposed, in the lower court, to the appellant's being dispossessed by the respondent Kaidernath, and by Gunganarain, Bhobosoondrie's husband. With regard to their evidence, it is not, I think, satisfactory. Necloo says that Kaidernath the respondent was, at the time he and others dispossessed the appellant, 7 or 8 years old. The witness Goluk says at the time of appellant's being dispossessed by Kaidernath and others, that person was aged 16 years, and the third witness Edoo says that Kaidernath was ten years of age. This is rather contradictory. Moreover the witness Neeloo appears from his own statement to be a person ready always to give his evidence on any matter in courts of justice, and says he is always obliged to do so for the zemindar residing in his neighbourhood, by name Kistanund Biswas. Goluck deposed to the evidence he gave in the lower court being the fourth time he had done so. Besides, the witnesses are unable to specify any particular time when the dispossession of the property was effected. In appeal two other witnesses, as observed, of appellant attended. They are named Hullodhur Mookerjee and Durponarain Ghose. They say the appellant was dispossessed of her estate by the respondent; but their evidence is not precise, and they live at a considerable distance from the property. The witness Durponarain in his evidence admitted not having even seen the property from which he says the respondent, Kaidernath, ousted the appellant, and states that this was the fourth occasion of his giving evidence in the courts of this district. Considering the evidence taken in the lower court, and in the court of appeal, I dismiss the appellant's appeal.

THE 19TH AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

*Appeal from the decision of Roy Hurchunder Ghose, Principal Sud-
der Ameen, passed on the 4th of May 1846.*

Isser Chunder Doss Kansarree, for self, and as guardian of his
minor brothers, Petumber Doss Kansarree and Govind Chunder
Doss Kansarree, (former Plaintiff,) Appellant,

versus

Tarneer Churn Bundopadhya, Praunkisten Mookopadhya, Praun-
kisten Doss Kansarree, and Parbutty Churn Doss Kansarree,
(former Defendants,) Respondents.

THE plaintiff stated that he was proprietor with his two brothers, the minors above named, and another, of a piece of land consisting of 6 cottahs, and of a house thereon, situated in Bowannypore in the suburbs of Calcutta. The fourth share of this was the property of Parbutty Churn Kansarree, plaintiff's elder brother, against whom a decree was passed by the moonsiff of Russa, in favor of Praunkisten Kansarree, the defendant. In executing that decree the entire house and land belonging to the four brothers was sold to Tarneer Churn Banerjee, notwithstanding that the plaintiff set forth their (his own and his two brothers') claim by petition, pending the execution of the decree, to the moonsiff. This claim was rejected. And on this the plaintiff instituted a regular suit in the moonsiff's court to recover their portion of the land, and of the house, sold to Tarneer Churn Bundopadhya. In the moonsiff's court the claim was dismissed; but on appeal to the additional principal sudder ameen, the plaintiff obtained a decree, which awarded plaintiff and his minor brothers 3-4ths of the land and house—of course the sale of Parbutty Churn's portion being upheld. On the plaintiff's suing out execution of this decree it was found, the plaintiff stated, that the house had been altogether pulled down by the auction purchaser, Tarneer Churn, and the materials appropriated by him. This was represented by petition to the moonsiff, who referred the plaintiff to a regular suit for the value of his and his two minor brothers' share of the building. And this suit is now accordingly brought by him against the defendants, among whom Praun Kisten Mookerjee is included, as the plaintiff says he is the real purchaser of the property, in the name of the defendant, Tarneer Churn Banerjee.

Tarneer Churn, in answer, stated that the building became a ruin, *pendente lite*, during the rains, and denies having pulled it down, or appropriated the materials thereof, which are specified in the plaint.

Praun Kisten Mookerjee answered that he had nothing to say to the case.

The principal sudder ameen dismissed the case. He did not enter into its merits. He was of opinion that the Construction No. 1129 ruled that this action could not be tried ; for it had already, in the former case, wherein plaintiff got a decree, been decided that the house, or rather the portion claimed by plaintiff, was his and his minor brothers' property, and therefore no new suit for the same thing could now be brought.

From this decision the plaintiff appeals.

To me it appears that the Construction No. 1129 does not apply to this case. If it did, considering that the moonsiff would not take cognizance of the plaintiff's statement, made by petition, during the execution of his former decree, I do not see what remedy the plaintiff could have, supposing his statement to be true, that the house had been pulled down, and the materials appropriated by the defendants. In the case, formerly decreed against the defendants, the plaintiff laid his suit at 228 rupees ; now he does so at 1360 rupees.

The former valuation was according to the price fetched at the sale of the property in satisfaction of Praun Kisten's decree. I see nothing unreasonable in the present valuation being considerably enhanced, as it must cost the appellant a large sum to rebuild the house, if it has been pulled down ; and besides the share of the land and house, for which plaintiff formerly sued, there is in his present plaint a claim for remuneration for ten thousand bricks, for thirty-six beams, and for was-silaut or mesne profits, collected by defendant, Tarnee Churn, pending the appeal in the additional principal sudder ameen's court. These items were not included in the plaint brought by plaintiff formerly, and, not having been so, the Construction No. 1129 cannot be held to bar the claim now set up. Under all the circumstances of the case, therefore, I consider it legal to proceed with the trial of this case on its merits, and for that purpose I remand the case to the lower court. The price of the stamp of the petition of appeal to be returned to the appellant.

THE 20TH AUGUST 1846.

PRESENT : R. TORRENS, JUDGE.

Appeal from the decision of Moolvee Myneooddeen Sufdur, Additional Principal Sudder Ameen, passed on the 18th of May 1846.

Narain Sing, (former Defendant,) Appellant,

versus

Motee Chand Goozerattee, (former Plaintiff,) Respondent.

FOR rupees 1390,-14 annas, balance of account, including interest.

The plaintiff brought this action, stating in his plaint and supplementary plaint, that the defendant owed him rupees 965, 14 annas, principal and interest, amounting altogether to 1390 rupees, 14 annas, on account of cash advanced, and credits granted on other houses. The plaintiff stated that defendant acknowledged by his signature to the balance sheet (which signature was attached on the 16th of May 1840) of the account, the above sum of rupees 965, 14 annas to be due to plaintiff. This signature plaintiff states was attached in Calcutta, where also all the pecuniary transactions between plaintiff and defendant took place.

In answer defendant stated that it was true there were pecuniary transactions carried on between him and the plaintiff; and that he had owed rupees 965, 14 annas to the plaintiff, but he denies that he had ever signed any account in acknowledgment of that debt. He states that Golab Chand Baboo, a merchant of Purneah, whose was a corresponding house with that of plaintiff, owed him, the defendant, 2900 rupees, and he, Golab Chand, drew on the plaintiff for that amount in defendant's favor. Accepting this order, or draft, the plaintiff paid, by bank notes, rupees 1200 to defendant, deducted from the amount of the said draft rupees 965, 14 annas, with interest thereon, amounting to rupees 214, 2 annas, and gave an ekrar or acknowledgment to defendant for the remainder,—defendant states, rupees 1520—to be paid in six months. The defendant filed this ekrar or acknowledgment, and urges further that his fixed place of residence is in zillah Gorukpoor, and that his temporary lodging only is in this zillah at Barrackpoor Bailooreeah; he carries on no trade there nor does he continually reside there as plaintiff states in his urzee. Defendant submits that the courts of the 24-Pergunnahs have not jurisdiction in this case.

The plaintiff, in a supplementary plaint, corrected some errors in his original plaint regarding the money transaction between him and the defendant, which errors were noticed in the latter's answer. With regard to the place of residence of the defendant the plaintiff states that his, defendant's, present residence is at Barrackpoor, Bailooreeah, in this zillah, where he has a "guddee," or house of business; but his, defendant's (আসন) original or fixed place of residence is in Gorukpoor zillah.

The additional principal sudder ameen decreed the case for the principal, rupees 965, 14 annas, only, being unable to find that it was specified that interest was to be paid by defendant. The additional principal sudder ameen was of opinion that the ekrar or acknowledgment of plaintiff (filed by the defendant and which is referred to in his answer) to pay 1520 rupees, to the defendant within six months, was a forgery. This opinion he formed because the endorsement of the sale by the vendor of the paper, on which

the ekrar or acknowledgment was written, is dated the 13th of March 1842, the document itself bearing date the 31st of March 1842, and on referring to the collector of stamps books and accounts, corroborated by evidence taken by the additional principal sudder ameen, it appeared that the paper was not delivered from the stamp stores until the 7th of September 1842, on which date the vendor obtained it.

From this decision the defendant appealed the day after the decision was passed, pleading again that the additional principal sudder ameen's court had not jurisdiction, and that the sum, less interest, for which the plaintiff sued being rupees 965, 14 annas, the suit ought to have been instituted in the sudder ameen's court, not in that of the additional principal sudder ameen. He urges further objections combatting the opinion that the ekrar, or acknowledgment, was a forgery.

With regard to the suit being instituted in the sudder ameen's court, instead of that of the principal sudder ameen, I have to remark that the amount claimed by the plaintiff was rupees 1390, 14 annas, and it follows that a suit for that amount could not be tried in the court of the sudder ameen. Besides the case was specially referred when first instituted by the judge to the additional principal sudder ameen for trial. Respecting the opinion expressed by the additional principal sudder ameen that the stamp paper on which the ekrar or acknowledgment filed by the defendant was in the stamp collector's custody instead of having been, as the endorsement would indicate, sold by the vendor on the 13th of March 1842, I deem it unnecessary to enter into an enquiry of the correctness or otherwise of this opinion. For the important question of non-jurisdiction was raised by the defendant, appellant, in his answer. It is alleged by plaintiff, respondent, that the pecuniary transactions between him and defendant, appellant, which transactions form the grounds of this action, took place in Calcutta. Plaintiff, respondent, further admitted that the residence of the defendant, appellant, is in the zillah of Gorukpoor, and that the defendant, appellant, has a "guddee," or house of business, at Barrackpoor, Ballooreeah, in this district, and having such, plaintiff, respondent, considered him amenable to the civil courts of the 24-Pergunnahs. It was, I conceive, incumbent (according to Section 10 of Regulation XXVI. of 1814, Clause 3,) on the different judges presiding at various times in the lower court, while this action was under trial, to call for proof that it had jurisdiction, which has not been done at all. There was no evidence offered, called for, or taken, on that point. The Circular Order of September 13th 1843, para. 2, shows that this point of jurisdiction was the one first of all to be enquired into, and the latter part of the same paragraph indicates, I consider, that the proper

course for this the appellate court to pursue, is to remand this case for retrial, in order that it may be ascertained whether the residence of the defendant, in this district, is of that kind which would render him amenable, in this action, to the civil courts of the 24-Pergunnahs. The price of the stamp on the petition of appeal to be returned to the appellant.

THE 20TH AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Mahomed Ruffa, Moonsiff of Bistenpoor, passed on the 22d of June 1846.

Mirtunjoye Haldar, (former Defendant,) Appellant,

versus

Rammohun Mistree, (former Plaintiff,) Respondent.

FOR 61 rupees, 12 annas, on account of paddy lent on a bond.

The plaintiff brought this action for the above amount, having on the 6th of Assar 1247 B. S. borrowed on a tumsook, or bond, ten sullees (a sullee is a measure containing 5 maunds, 10 seers) and five kattces (each kattee being ten seers) which was to be repaid in four months; it was stipulated in the bond that a profit was to be given on each sullee to the plaintiff by defendant, according to the custom of the part of the country where the parties resided.

The defendant denied in his answer that he borrowed the grain. He stated that he could prove that he was at the house of his zameendar on the date (above mentioned) he was said to have given the bond, and borrowed the grain. The distance, the defendant says, between his zameendar's, and the plaintiff's house, where the transactions according to plaintiff's statement were effected, is two days' journey,

The moonsiff took the evidence of three witnesses on plaintiff's part. They deposed to the plaintiff having lent the grain to, and to its having been taken away by the defendant, who signed the bond in the witnesses' presence at plaintiff's house. The defendant did not adduce evidence, and the moonsiff decreed the quantity originally lent as well as ten sullees, five kattees, in excess of that quantity, as profit or interest accruing during the period the loan remained unrepaid.

An appeal is preferred by defendant, who states that he was unable on account of sickness, to take the necessary steps to procure the attendance of his witnesses.

He again denies the obligation; and states that plaintiff, respondent, is instigated by one Jadub Chunder Banerjee (plaintiff's, respondent's, master) to bring this action, because he, defendant,

appellant, had gained a case against that person in the court of the additional principal sudder ameen of this zillah. Appellant prays to have his evidence taken.

On referring to the tumsook or bond I observe it is stipulated that the profit to accrue to the plaintiff for lending the grain to the defendant, is to be calculated according to the custom of the country wherein the parties reside. On hearing the evidence of the plaintiff's, respondent's, witnesses, Sisteedhur Haldar, Rankisten Goin, and Bustum Churn Dulwey, I observe they say that the stipulation was not as written in the bond, but that it was agreed that half a sully in excess on each sully lent was to be paid, by defendant, appellant, to the plaintiff, respondent. Thus the evidence is at variance with the conditions expressed in the bond, and being so I do not credit the witnesses' statement that they saw the defendant, appellant, sign any such document, or that they saw him, after doing so, take away the grain alleged to have been borrowed. And I therefore decree this appeal ordering respondent to pay all costs.

THE 21ST AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Baboo Gunga Govind Soom, Moonsiff of Pautterghotta, passed on the 22nd of June 1846.

Koobeer Mistree, (former Defendant,) Appellant,

versus

Gudadhur Safooe, (former Plaintiff,) Respondent.

FOR rupees 253, 12 annas, 4 gundahs, 3 cowrees, balance due, according to an ekrar or agreement, for bricks sold.

The plaintiff stated that, in the month of Maug 1251, the defendant, who resides in the village of Baideadungah, in Dhee Punchawongong, within the moonsiff of Manicktullah, came to his house and bargained verbally for a kiln of bricks, belonging to plaintiff, in Tupseeah village, in the same jurisdiction, to be sold to him at the rate of rupees 3 per thousand. The kiln contained 95,000 bricks, plaintiff states, of the value, at the above rate, of 285 rupees. This verbal bargain was closed in the presence of witnesses. Defendant accordingly, plaintiff further states, was in the habit of carrying away as many bricks as he required, and had paid, in Maug 1251, to plaintiff's son, Bugwan Chunder Safooe, rupees 25 in part payment of the price of the bricks, leaving due then rupees 260, which being unable to pay, he, defendant, came to plain-

tiff's house and paid him 9 rupees, leaving still due to plaintiff 251 rupees. He, defendant, then on the 6th of Assin 1252, in plaintiff's house, executed an ekrar, or agreement, in the presence of witnesses, to pay in the two months specified therein two instalments in liquidation of the sum due. This not having been done plaintiff sues for the amount this suit is laid at, which includes interest. Plaintiff states that he resides in the mouzah of Dearrah (within the jurisdiction of the moonsiff of Pautterghotta,) where the ekrar or agreement was, he says, executed by defendant.

Defendant stated in answer that he never executed any ekrar, or acknowledgment, as set forth by the plaintiff. He admits having purchased 30,125 bricks from the plaintiff, and alleges that he paid him rupees 83, 8 annas for them, leaving due to plaintiff only 6 rupees, 14 annas, for all the bricks he had bought from the plaintiff. He says that the remainder of the bricks, which plaintiff alleges, he, defendant, bought and took away, are still on the plaintiff's ground in Tupseeah, and defendant adds that this is a false claim got up against him at the instigation of his brother, Hazarree Lushker, with whom he has a quarrel regarding ancestral property.

The moonsiff decreed the amount claimed, considering it proved by the evidence adduced by plaintiff, that the defendant had executed the agreement as alleged by the former.

From this decision the defendant appeals, stating that the evidence taken in the lower court was unworthy of credit, and that the moonsiff of Pautterghotta had not jurisdiction in the case, as he, the defendant, was a resident of a separate moonsiffec that of Manicktullah.

It is, I observe, clearly admitted by the plaintiff, respondent, that the appellant, defendant, resided within the jurisdiction of the moonsiff of Manicktullah. This being the case, I do not consider that the alleged execution of the deed, or agreement, on which plaintiff, respondent, founds his claim, having taken place within the jurisdiction of Pautterghotta, empowered the moonsiff of Pautterghotta to try this action. It was ruled by the Sudder Dewanny Adawlut (Construction of the 15th of June 1827) that a moonsiff is not competent to take cognizance of a suit, for money or other personal property, in which the defendant is not resident within his jurisdiction. Section 5 of Regulation V. of 1831, moreover, rendered it illegal for the moonsiff to try this case, the defendant, appellant, therein, residing in another jurisdiction. The plaintiff lives in the jurisdiction of Pautterghotta, and would appear to have instituted the suit in that moonsiff's court, in preference to that of the moonsiff of Manicktullah, for his own convenience. Under these circumstances I decree this appeal, and nonsuit the plaintiff; and desire the moonsiff to explain why he took cognizance of this action contrary to the rule and law I have cited.

THE 22ND AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Tarachand Dey, Moonsiff of Manicktullah, passed on the 8th of July 1846.

Wuzeer Khan, (former Defendant,) Appellant,

versus

Sirlhuck Mitter, (former Plaintiff,) Respondent.

FOR rupees 12, gundahs 16, due on account of wages.

The plaintiff in this case sued for wages due to him, he alleged, by the defendant, who had employed plaintiff as a writer in his business. The defendant is, plaintiff states, a manufacturer of bricks. Plaintiff set forth that he was employed on a salary of six rupees per mensem, and was entertained on defendant's establishment from the 6th of Falgoon 1252, until the 25th of Bysack 1253, when he was dismissed. Rupees 3, 12 annas, only, he asserts, were paid him by the defendant, and rupees 12, 6 gundahs, being due, which the defendant will not pay him, he brings this action to recover that amount.

Defendant in answer admits that he did employ the plaintiff in his office as he states, but only at a salary of rupees 5 per mensem. He, defendant, had paid plaintiff rupees 9, 12 annas, and there only remained due rupees 3, 10 annas, 13 gundahs, 1 cowree, and 1 krant.

The moonsiff gave a decree in plaintiff's favor, whose claim was proved by evidence. Defendant did not adduce any proof in support of his statement in the lower court.

The appellant appeals, stating that the moonsiff should have afforded him more time to admit of the attendance of his witnesses, for which attendance, appellant says, process had been issued. He states that the moonsiff, according to law, should, after the issue of the subpœnas, have waited for six weeks before he decided the case.

I observe that subpœnas for the attendance of the defendant's, appellant's, witnesses were issued by the lower court. The witnesses acknowledged the receipt, or service, of those subpœnas, but failing to attend to give evidence, an order, according to Section 31 of Regulation XXIII. of 1814, was desired to issue, to attach their, the witnesses,' property; but on the defendant, appellant, applying and signing an agreement, that if their property was not attached, he would bring them, the witnesses, into court, the order was recalled. The defendant, appellant, agreed to bring his witnesses in three days, that is, within the period named in the subpœna. He defendant, appellant, did not do so, and nine days after he had given the agreement, to the foregoing effect, the moonsiff decided the case.

It was clearly, I observe by the agreement given by the defendant, appellant, on his application, that the process to enforce the witnesses' attendance did not issue; and that being the case, as he did not produce his witnesses, and as Act XXIX. of 1841, (to which appellant makes reference when he says the moonsiff ought to have deferred his decision for six weeks,) does not apply to defendants, I see no reason for interfering with the decision of the lower court, which I affirm.

THE 22ND AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Tarachand Dey, Moonsiff of Manicktullah, passed on the 7th of July 1846.

Sreemuttee Dhunnea Mellennee, Jeetoo Powawallec, and Chowree Raur, (former Defendants,) Appellants,

versus

Booteenee Bcwa, (former Plaintiff,) Respondent.

FOR rupees 63, 14 annas, on account of an agreement for money and silver ornaments.

This action was instituted to recover rupees 31, 4 annas; also for the value of a silver armlet, of a silver bracelet, and of a silver chain. The money was said by plaintiff to have been borrowed at different times by the defendants, and the silver ornaments had been lent by plaintiff, to assist the defendants in their pecuniary means, but not returned. Accordingly the defendants signed, plaintiff alleges, an agreement on the 27th of Mang 1252, to re-pay the money, and to return the articles specified within one month. This not having been done, the plaintiff brings this action.

Defendants deny that they ever got any money, or ornaments, from the plaintiff, or signed any agreement, as stated by her. The defendants, Dhunnea and Chowree, moreover say, that the case is got up against them by the plaintiff, because they have a claim against her, on account of articles they had deposited with one Mohun Kormee, who had resided in plaintiff's house. Mohun died while an inmate of her's, and as defendants objected to the in cremation of his remains, unless they obtained their property, plaintiff, to pacify them, agreed that the things deposited with Mohun should be forthcoming, which plaintiff having failed to make them be, defendants were about to institute a suit against her to recover their property.

The moonsiff decreed the case, deciding, that the plaintiff was entitled to the cash mentioned in the plaint, and to the silver articles, or the value of them. The moonsiff considered that the execution of the agreement by the defendants had been proved, and,

this proof having been given, he did not, he stated, consider it necessary that proof should be taken that the consideration mentioned therein had been received.

Defendants appeal. They repeat the statements made in their answers. They refer to contradictions in the evidence of the three witnesses adduced by plaintiff, and they submit that it was incumbent, according to the spirit of Section 15 of Regulation III. of 1793, on the moonsiff, to have taken proof that the money, and the valuable consideration mentioned, had been received for the agreement they are said to have signed.

The plaintiff does not, I observe, specify when the money was lent, or to which of the defendants, or to whom the articles referred to were delivered, or when. According to the spirit of the law cited by appellants I consider the moonsiff ought to have called for proof that the considerations stated in the agreement had been received by the appellants, before he decided this case. He took no such proof. The case must be returned to him to admit of the plaintiff's giving that proof.

The witnesses do not speak, with satisfactory clearness, as to the place where the agreement was given. The first witness, Meajon, says, it was given at plaintiff's residence; the second, Kangallec, says, it was at the door of plaintiff's house; and the third witness, Anunteeram, says, it was in the court-yard. The moonsiff will recall those witnesses, and more closely question them as to the exact place they, the defendants, appellants, executed the agreement in. I therefore decree the appeal, and return the case to the moonsiff to carry into effect the above mentioned orders. The value of the stamp paid by the appellants on their petition of appeal is to be returned to them.

THE 26TH AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Mr. J. Weston, Sudder Ameen, passed on the 10th of July 1846.

Ram Mohun Ghose, (former Defendant,) Appellant,

versus

Sooba Heeralall Jah, (former Plaintiff,) Respondent.

SUIT laid at rupees 846-2-10 in the lower court.

This action was instituted for rupees 846, 12 as., 10 gs., which plaintiff claimed alleging that amount was due to him by the defendant, Ram Mohun Ghose, inasmuch as he and his son, Anund Chunder Ghose, now deceased, had been in the habit of purchasing timber from the plaintiff; and on an adjustment of accounts on the 2d of Kartick 1251, it was found there was due to the plaintiff by

the defendant, Rammohun, and his son, Anund Chunder, rupees 764; 10 gs., which, with interest, amounting to the sum above mentioned, is now claimed according to the hath chitta, or memorandum, kept by plaintiff of the transactions between the parties. Plaintiff states, that the hath chitta he refers to was a new hath chitta, bringing forward the balance due to him by the defendant, on account of the transactions of former years. In a supplementary plaint, plaintiff set forth that the heirs of Anund Chunder Ghose (deceased, son of Rammohun, the defendant) were Mutteelall Ghose, his son, a minor, his daughter Nuffer Dossee, also a minor, and his widow, Anundmei Dossee, the latter of whom was made a defendant in this case as the guardian of the minors.

In answer Rammohun Ghose stated that he had formerly carried on business as a timber merchant, but as he had become very old, and was in ill health, one Taiksarree, a merchant, hearing of his illness, came to defendant in Maug 1250, and said that he, defendant, owed him rupees 185-0-0, being the balance of accounts between them (defendant and the Taiksarree) from 1247 until the 26th of Assur 1250. That person desired that defendant would make arrangements to pay the balance, or that he would make it obligatory on his son, Anund Chunder Ghose, to pay that debt. After these arrangements being several times urged on the defendant Ram Mohun, his son Anund Chunder undertook to discharge the debt, rupees 185-0-0; and his son after that carried on the business at Barrackpoor, in pergunnah Boro. In fact, defendant states, his son Anund Chunder carried on the trade from the month of Maug 1250, and the defendant (Rammohun) has had nothing to say to the trade since then. His son, Anund Chunder, died in Kartick 1251, leaving his widow, a son, and a daughter, as his heirs, whom, Ram Mohun the defendant urges, the plaintiff ought to have sued for the amount claimed; he urges that he (defendant) is not possessed of any effects from his son, or his legal heir. Finally he denies that he ever carried on business with his son as his partner as plaintiff alleges. He (the defendant) prays that his account books may be compared with the plaintiff.

Luckeerain Mookerjee gave in a petition, pending this case, to the effect that Ram Mohun Ghose, the defendant, had sold all his property to him, and praying that no order should be passed, in consequence of plaintiff's claim prejudicial to his, petitioner's, interest.

The sudder ameen decreed the claim for principal only, considering it proved by the hath chitta or memorandum filed by the plaintiff and the evidence he adduced, that 764-0-10 gs. were properly due by the defendant Ram Mohun, and Anund Chunder, his son, to plaintiff, and that Ram Mohun Ghose, the defendant,

had succeeded to his son's effects. The defendant's witnesses were not examined, because he did not take the requisite steps to secure their attendance in the lower court. The sudder ameen considered it unnecessary to enter into the question raised by the petitioner Luckeenarain Mookerjee.

The appellant appeals, again urging that he never had carried on business as a timber merchant with his son Anund Chunder; that the latter had taken on himself to defray all demands on account of appellant's transactions previous to his, appellant's, relinquishing business. He urges further that the plaintiff, respondent, never did of himself carry on any business, or reside in, or visit, this zillah, and that this action according to Construction No. 75, in consequence cannot be brought. He submits that the hath chitta or memorandum produced by the plaintiff, respondent, on proof of which the sudder ameen decreed the case, is in many places interpolated, and shows the traces of erasures. He, appellant, denies that he, or his son, ever signed the hath chitta, which the sudder ameen considered it proved they had done.

Further appellant submits that he could not cause the attendance of his witnesses, as they were some of them ill and some absent from home.

In the sudder ameen's court, I observe that the evidence of five witnesses was taken in support of the plaintiff's demand. Their names were Rujub Allee, Bistennath Harra, Wuzeer Sirdar, Ram Bagdee, and Muthoor Bagdee. The first named says that the accounts of plaintiff and defendant were compared in the month of Maug 1250, but does not say who was present on behalf of plaintiff, on that occasion; then it was found that rupees 780, 14 annas, 10 gundahs, were due to the plaintiff: and the defendant Ram Mohun, and his son, signed a fresh hath chitta, or memorandum, bringing forward that sum as balance in plaintiff's favor. The witness says that again in 1251, in the month of Kartick, the accounts were examined by one Taiksarree, a servant or gomashtah of the plaintiff, respondent, when it was ascertained that rupees 764, 10 gundahs, were due to the plaintiff by Ram Mohun, (Anund Chunder, previous to the last mentioned date, having deceased,) who verbally agreed to pay that amount within two months. The second witness, Bistennath Harra, says the same as the foregoing witness regarding the hath chitta or memorandum, and the balance brought forward in Maug 1250. He says that on a comparison of accounts, on the 2d of Kartick 1251, it was found that Ram Mohun Ghose owed plaintiff rupees 764, 10 gundahs, which the defendant agreed to pay within two months. The witness does not say who was present, either in 1250 or 1251, on behalf of the plaintiff at the examination of the accounts. The third witness, Wuzeer Sirdar,

says the same as the foregoing two, with regard to the hath chatta or memorandum, and the balance therein brought forward in Maug 1250. He speaks without clearness as to who was present on plaintiff's, respondent's, behalf in Maug 1250; and mentions no one as present as plaintiff's, respondent's, agent in Kartick 1251, when rupees 764, 10 gundahs, were ascertained to be due by defendant, appellant, to plaintiff, respondent. The fourth witness, named Ram Bagdee, mentions the occurrences described by the other witnesses as having taken place in 1250. He omits all mention of any one having been present on plaintiff's, respondent's, behalf then; and on comparing accounts on the second of Kartick 1251, he says one Roopnarain Sing was present as plaintiff's, respondent's agent, when Ram Mohun the defendant, appellant, stated to that person that he would pay the balance within two months. The fifth witness, Muthoor Bagdee, on being asked who was present when the accounts were compared in 1250, and defendant's, appellant's, signature, and that of his son, attached to the hath chitta or memorandum, mentions no one as being present on plaintiff's behalf; and says that Roopnarain Sing was present as plaintiff's agent in Kartick 1251: but contradicting the preceding witness, Ram Bagdec, he says that a person named Avuldar, on plaintiff's, respondent's, behalf, was the individual to whom Ram Mohun, the defendant, appellant, promised he would pay the money (rupees 764-0-10 gas.) ascertained to be due by him, defendant, appellant, within two months. With reference to the foregoing evidence it is to be remarked that the first witness, differing from all the others, says that one Taiksarree on plaintiff's part was present when the balance was ascertained, in Maug 1250, to be due by defendant, Ram Mohun, and his son. The second witness, only naming the witnesses who have deposed on plaintiff's, respondent's, behalf as present, omits all mention of any one appearing on plaintiff's part as gomashtah or agent, either in 1250 or 1251, at the examination of the accounts. The third witness does not speak clearly as to who was present, as plaintiff's agent in 1250 or 1251, at the examination of the accounts. The fourth and fifth witnesses agree with respect to the agent, Roopnarain Sing, of plaintiff, present when the accounts were compared in 1251, but mention no one as being present on his behalf in 1250, and they differ as regards appellant's, defendant's, promise to pay the amount due within two months. One of these witnesses says, the promise was made to Roopnarain Sing, the other that it was made to a person named Avuldar. True they all swear to the hath chitta or memorandum, and that the accounts were compared, and the memorandum signed in 1250 by appellant, defendant, and his son Anund Chunder; and that again in Kartick 1251 the accounts were compared, when rupees 764, 10 gas., resulted as the balance due by defendant, appellant; but, as they contradict themselves,

with regard to who was the agent present on respondent's behalf, though particularly questioned as to who were the persons present on the two occasions they, the witnesses, describe, I do not implicitly believe their evidence, more especially when I regard the suspicious circumstance of these low persons—coolies and laborers—unconnected with either of the parties, saying they were twice present, in different years, by mere chance, at an examination and comparison of accounts of transactions between the appellant and respondent. The former accounts from whence the balance, brought forward in the hath chitta or memorandum of 1250, is said to have been ascertained, are not produced nor were they called for by the lower court. With respect to the other allegations in the petition of appeal I consider it unnecessary to notice them, further than to say that I do not consider that the Construction, No. 75, cited by the appellant, can be held to bar the institution of this suit by Sooba Heeralall Jah, and that there are no erasures or interpolations in the hath chitta or memorandum. But taking into consideration the nature of the evidence adduced by the plaintiff, respondent, I deem it more just in this case that further enquiry should be made; that the accounts, and proof of their genuineness—of the transactions between the parties previous to the alleged signature by the appellant and his son, in Maug 1250, be called for, and carefully examined by the lower court; and that opportunity be given to the appellant to have his witnesses, in the prescribed manner, brought into court, and to file any documents he may think it necessary to produce. I therefore decree the appeal, and send it back for re-trial to the lower court, to carry the above instructions into effect.

THE 27TH AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Baboo Gungagovind Soom, Moonsiff of Pautterghotta, passed on the 22d of June 1846.

Muddoosooden Lashker, (former Defendant,) Appellant,
versus

Gourmohun Mookerjee, (former Plaintiff,) Respondent.

FOR rupees 55, 6 annas, due on a bond.

The plaintiff brought this action to recover the above sum, being due, he stated, by the defendant, on account of 45 rupees for a bond, given by defendant, and interest thereon. He stated that the defendant had paid him 3 rupees cash, leaving the sum above stated still due. He states that the date of the bond was the 5th of Aughun 1250.

In answer the defendant stated that he owed no money to the plaintiff, that on the date he is said to have given the bond, he,

defendant, was at the village of Kalleebuttee, in the house of the brother of his daughter-in-law, whose father having died, he, defendant, went to assist at the deceased's funeral obsequies. Defendant states that he remained there from the 26th of Kartick until the 10th of Poose 1250, and adds that he was labouring under severe illness during nearly the whole of that period, as his medical attendant and others can prove. He further states that the case is got up against him, defendant, in consequence of his having made himself obnoxious to plaintiff, by having given evidence in the fouzdarree court, in a case wherein the plaintiff was interested.

The moonsiff decreed the amount claimed, considering that it was proved by the evidence of the writer of the bond, and of the witnesses thereto, as well as by the evidence of others who deposed to the payment of 3 rupees, by the defendant to plaintiff, and to the repeated applications of the latter to the defendant, for his money.

Appellant appeals from this decision, and repeats in his petition the statements made in his answer.

On hearing the evidence of the four witnesses adduced by the defendant, who are named Ram Soonder Kabraj, Madhab Halder, Kalla Chand Lushker and Muddoo Sooden Mundle, I observe they are every one related to, or connected with, the defendant, appellant, and I do not consider they have satisfactorily proved the defendant to have been absent from his house on the date of the bond, or that there exists any enmity on the respondent's part, inducing him to get up this claim against the appellant, whereas the evidence brought forward by the plaintiff, respondent, has proved the execution of the bond and the payment of 3 rupees, a part of plaintiff's, respondent's, claim to the latter. I therefore affirm the moonsiff's decision.

THE 29TH AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Gungagovind Soom, Moonsiff of Patterghotta, passed on the 29th June 1846.

Seebgam Ghose and Joynarain Ghose, (former Defendants,
Appellants,

versus

Kitabooddeen Mundle, (former Plaintiff,) Respondent.

BESIDES the appellants there were sued, in the lower court, Raj Chunder Ghose and Toostoomunee, widow of Ram Chunder Ghose, and the following persons, zameendars of the village wherein the land is situated:—Bistennath Biswas, Cassinath Biswas, Sumbhoonath Biswas, and Chundernath Biswas.

For possession of 11 beegahs of land valued at rupees 143.

The plaintiff instituted this action for possession of the above stated quantity of land, situated in the village of pergunnah Calcutta, which he stated had been pledged (by Seebram Ghose, Joyenarain Ghose, Ram Chunder Ghose, deceased, and Raj Chunder Ghose, the three last named being the sons of Seebram Ghose,) according to a kubala or deed of sale dated the 12th of Chyete 1247. He states that the defendants executed that deed having received a loan of rupees 128 from him, plaintiff, secured on the land, and it was agreed verbally that if within one year the money was repaid with interest in one payment the deed of conditional sale or kubala was to be returned, otherwise the land was to come into plaintiff's possession, it remaining for the term above specified in the defendant's hands. The defendants did not repay the debt, and the plaintiff according to Regulation XVII. of 1806, Section 8, presented a petition according to which notice of intention of foreclosure was sent to defendants. After ten months from the date of receipt of that notice had elapsed, plaintiff states that Seebram Ghose petitioned the judge of this district to the effect that the plaintiff had held possession of the land, (which he, Seebram, admitted to have been mortgaged,) in the name of his father-in-law Kanye Mundul, to whom a lease was given by defendants and from whom a cubooleut or agreement was taken by them, stipulating that during the period of plaintiff's thus holding possession (in Kanye Mundul's name) he was to pay yearly to defendants rupees 18, 8 annas rent for the land, which for 3 years amounted to 55 rupees, 8 annas, which sum defendants claimed to be credited with. In that petition it was further stated that 104 rupees cash was paid to plaintiff on the 26th of Pose 1250, that on an examination of accounts it was ascertained rupees 43, 8 annas, 11 gundas, 2 cowries were due for interest by defendants, and on that date plaintiff gave a receipt duly witnessed for rupees 115, 8 annas, 8 gundahs, 2 cowries. But plaintiff urges that the statements in this petition of Seebram's are all false, and that he never has been repaid a rupee by the defendants. Now he sues for possession of the land mortgaged by them.

In answer Seebram Ghose stated that he and his sons before named, did truly borrow rupees 128 from the plaintiff and executed the kubala, it being verbally agreed that the plaintiff was to hold possession of the land mentioned in his plaint, until the amount of yearly rent payable by plaintiff, being retained by him, had liquidated the sum lent by plaintiff to the defendants. The plaintiff did hold possession. He would not give a cubooleut in his own name, but gave one in the name of Kanye Mundul his father-in-law, dated the 25th of Chyete 1247, wherein he agreed to pay a yearly rent of rupees 18-8. He, defendant, states further that his son Ram Chunder Ghose is, as plaintiff mentions, dead, but that

his widow who has been sued can have no legal claim on the property, or on any portion of it, in dispute. Still, she having been made a defendant had not proper notice of this action, for on her husband's demise, she, having altogether separated from defendant, went to live at her father's house within the jurisdiction of the moonsiff of Kuddumgotchee, where due notice was not served on her. Defendant urges that he has, as stated in the petition referred to in the plaint, a receipt from plaintiff granted for rupees 115, 15 annas, 8 gundahs, 2 cowries, and that after the notice, according to Section 8 of Regulation XVII. of 1806, was served, a deposit of rupees 16, 2 annas, on account of principal and interest, was made in the treasury of the judge, which fully liquidated the debt due to plaintiff. Defendant further says that the kubala, according to which deed the 128 rupees was lent, was not returned to defendant when the 115 rupees, 15 annas, 8 gundahs, 2 cowries, was acknowledged by plaintiff, because a small sum remained still due to plaintiff, which as he has above stated was deposited in the judge's treasury. He adds that on a comparison of accounts on the day the receipt was granted (the 26th of Pose 1250) by plaintiff, the result was as follows.

Originally due according to the kubala to the plaintiff,	Rs. 128	0	0	0
Paid in cash by the defendants according to the receipt filed, being dated the 26th of Pose 1250.....	Rs. 104	0	0	0
Rent for the land in plaintiff's possession for 3 years at 18 rupees, 8 annas yearly.....	Rs. 55	8	0	0
	159	8	0	0

Deduct interest due to plaintiff, Rs. 43 8 11 2 c.
 And the appellant alleges that the balance with interest has been deposited in the court's treasury. This balance was rupees 16, 2 annas, 3 pie. Further they state that, on the adjustment of accounts, on the 26th of Pose 1250, the plaintiff relinquished possession of the ground, which defendant leased to one Koobeer Mundul. Joyenarain Ghose in his answer makes the same statements as Seebaram Ghose. The other defendants filed no answers.

The moonsiff decreed the case, considering that the petition for foreclosure, (according to Section 8 of Regulation XVII. of 1806,) and the notice of it was formal, and its service on the defendants, who had borrowed the money, proved. He was of opinion that there was no proof of the repayments of any part of the money lent to them, defendants, by plaintiff. Nor was he of opinion that it had been proved that the plaintiff had held possession, for any time, of the land in dispute, as urged in defendant's answer.

Appellants appeal from this decision. They repeat the statements made in the answers filed in the lower court. They add that the plaintiff did not, as he should have done, sue all the zemeendars of the estate wherein the disputed property is situated but only some of the partners; and they pray that an ameen be deputed to report as to whether the plaintiff had, or had not, possession of the disputed land, as they contended in the moonsiff's court that he had.

On referring to the document, the kubala, on which the plaintiff's, respondent's, claim to the land is founded, I observe it is an unconditional deed of sale, which however both parties in this case admit, on being asked, is used in this zillah, instead of the kutkabala containing the condition under which the sale of mortgaged property may be concluded. The appellants and respondent agree with regard to the loan of rupees 128 having been granted by the latter to the former, and it is to be considered whether the appellant did pay rupees 104 to the respondent, obtaining, after an examination of accounts, the latter's receipt for rupees 115, 15 as., 8 gas., 2 cees., and whether did the respondent ever hold possession of the land mortgaged, in virtue of the cubooleut said to have been given by him in the name of his father-in-law Kanye Mundul.

To prove that the plaintiff was paid rupees 104-0-0, and that he, after an examination of accounts, granted a receipt for rupees 115, 15 as., 8 gas., 2 cees., appellants produce the receipt dated the 26th of Pose 1250 B. S., and have adduced two witnesses to support their statement. The witnesses' names are Jafferoddeen Sheik and Kalachand. Those persons say the payment was made, and the receipt granted, two years and a half previous to their giving evidence. They both stated what is at variance with the appellants' answer, in saying that a larger sum than that which was due for interest was deducted on that account, when the accounts were examined. The witness Kalachand says that when the payment was made the kubala was read over to him, but I think if it were true that the payment was made, and the receipt granted, as appellants state, the kubala being, as the witness says, at hand, the appellants would have had the sum of rupees 115, 15as., 8 gas., 2 cees. endorsed thereon, instead of going to the expence of stamp paper and getting a separate receipt for it. Besides I observe that the petition referred to in the plaint was not given for more than ten months after application was made by plaintiff to foreclose. Had the statements made in that petition been true, I consider that no time would have been lost in presenting it. Moreover the cubooleut alleged by appellants to have been given by plaintiff in the name of Kanye Mundul, has not been filed by the appellants to support their statement that respondent had possession of the land in dispute.

For that purpose only one witness was brought forward by the defendants, appellants, in the lower court, on whose unsupported testimony I cannot believe that respondent did hold such possession of the ground pledged. I regard that statement (regarding possession) as the more improbable, because the appellants state that it was stipulated that the respondent was only to relinquish possession when the whole debt due to him was liquidated. Nevertheless appellants, defendants, stated in their answer in the lower court that the whole debt not being liquidated, the plaintiff, respondent, gave up possession on the 26th of Pose 1250, on which the appellants let the land to Koobeer Mundul. But it was not for more than fourteen months after, that the full payment of the debt was made, according to appellants' own admission, by depositing the balance due in the court's treasury. With respect to appellants' statement that the widow of Raj Chunder Ghose has not had proper notice of this action served on her, I consider it is not of any consequence. For legally she cannot (her husband having died during his father's life time,) be regarded as having any interest in the land in dispute; and were it otherwise I would remark that this statement of informal notice is contrary to the statement made in the petition, (referred to in the plaint,) given by appellants when plaintiff took steps to foreclose the mortgage. Therein appellants say Ram Chunder's widow was living with and maintained by them. As regards the plea that all the zameendars were not sued by plaintiff, respondent, I have to observe that the point is quite immaterial, and that it was not at all necessary for the plaintiff, respondent, to have sued any of the zameendars. Under all the circumstances I have referred to, I cannot see any reason to interfere with the decision of the lower court, and I dismiss the appeal.

THE 31ST AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Mr. J. Weston, Sudder Moonsiff, passed on the 23d of June 1846.

Isser Chunder Roy Chowdry, (former Defendant,) Appellant,
versus

Luckun Ghose, Seeb Chunder Gandee, Bugwan Ghose, Isser Chunder Ghose, Meis Chunder Gandee, former Plaintiffs, and Sumboo Chunder Chuckerbuttee, (former Petitioner,) Respondents.

FOR rupees 110, 11 annas, claimed as the value of paddy and straw, seized under a false process issued according to Regulation V. of 1812.

The plaintiff brought this action against Isser Chunder Chowdry, Cally Coomar Chuckerbuttee, Manoolla Khoonkar, Allee Mooftee, Sunker Sirdar, Muddoosooden Pyke, Hullodhur Dharra, and Puddolochun Lushker. They, plaintiffs, alleged that the defendant Isser Chunder Chowdry, and the others, had forcibly cut their crops and carried them away. They say the crops were growing on their land, consisting of thirteen beegahs, two kottas, which they, plaintiffs, hold by a lease from Sumboo Chunder Chuckerbuttee, in whose (birmooter) rent-free land their tenure is situated. The defendants, they say, acted thus, under the pretext that Regulation V. of 1812, authorised their seizure of the crops on account of arrears of rent, which Isser Chunder Chowdry claimed as part talookdar and part farmer of the 15 annas share of talook Andarreeah. A share of the arrears of rent said to be due, were claimed by Kally Kinker Roy Chowdry, proprietor of a $3\frac{1}{2}$ annas share of that portion, and also by Cally Coomar Chuckerbuttee as under farmer. This, plaintiffs state, was the substance of the claim as stated in the notice issued, according to Regulation V. of 1812, to recover rent due on account of the land held by them. They state the arrear was not required from themselves; but from one Puddolochun Lushker who, those defendants said, was their ryot, and who they alleged was in possession of plaintiffs' tenure.

The defendant Isser Chunder Chowdry stated that the land claimed by the plaintiffs, does not form any part of the lakeraj tenure of Sumboo Chunder Chuckerbuttee, but that it is situated within the 15 annas share of talook Andarreeah, of which he is a part proprietor with Calleeinker Roy Chowdry, whose portion Isser Chunder says he has taken in farm and underlet to Callycoomar Chuckerbuttee. Isser Chunder further states, that the land claimed by the plaintiffs was part of the ryottee tenure of Puddolochun Lushker, a ryot of defendants, for the recovery of whose balance of rent, process, according to Regulation V. of 1812, was had recourse to by the farmer and under farmer Callycoomar Chuckerbuttee, who attached the crops on ten begas of the land described by the plaintiffs. The defendant, Isser Chunder Chowdry, filed a cubooleut, which many years ago Ram Churn Lushker, an ancestor of Puddolochun, had given. It is dated in 1202 B. S., and is for 19 begas, 4 kottas, within which the land claimed by the plaintiffs is, and on which the crops which they also claim were growing. The cubooleut filed was given to Luckenarain Roy, Isser Chunder Chowdry's ancestor. The latter further files an ekrar, or agreement, given subsequently in 1237 B. S., for the same land by Puddolochun Lushker alone, on his brother's declining to continue to hold the land.

Of the other defendants Sunker Sirdar, Hullodhur Dharra, and Muddoosooden Pyke, plead they only acted in the matter of

attachment, as subordinates of the under farmer Cally Coomar Chuckerbuttee. Manoolla Khoonkar, in answer, stated that he had nothing to say to the attachment whatever. None of the other defendants filed answers.

The moonsiff decided the case in favor of the plaintiff so far that he decreed them 90 rupees, 3 annas. He considered that the cabooleut and agreement, filed by the defendant Isser Chunder Chowdry, were fictitious; and he was of opinion that the report of the ameen deputed by him (the moonsiff) made it apparent that the land, on which the crops carried away grew, was the plaintiffs', that the evidence of the witnesses, five in number, adduced by plaintiffs, proved the land and crops to be theirs, and that the defendant, Isser Chunder Chowdry, was proved by the evidence to have gone with several persons and to have carried away the crops forcibly. Isser Chunder was accordingly held liable to make good rupees 90, 3 annas (the value of the crops according to the evidence in the lower court) on that account. No order was passed with regard to Sumboo Chunder Chuckerbuttee's petition, (setting forth that plaintiffs' tenure was situated in his lakeraj property,) apparently because his, Sumboo Chunder's, claim was virtually upheld. All the other defendants were released from liability on account of the plaintiffs' claim. The moonsiff ordered that Isser Chunder Chowdry should defray the costs incurred by the plaintiffs, but he gave no order with regard to the expences incurred by those defendants in this case whom he released from liability.

An appeal is preferred by Isser Chunder from this decision. He submits that no documents, as there should have been, connected with the claim made according to Regulation V. of 1812 for the arrears of rent, were filed with, or called for in, the case when it was tried in the lower court, and that as his, Isser Chunder's, ryot's (Puddolochun Lushker's) residence was not correctly stated in the plaint, due notice could not be served on that person. If so, he submits, much assistance would have been derived (by appellant) by that person's having an opportunity to prove that the land was his mouroosee (hereditary) tenure. Further, appellant urges that the evidence taken in the lower court, and the documents filed by appellant, made good the allegations contained in his answer. On being questioned, the appellant explained that he is part farmer and part talookdar of Andarreeah, and that Cally Coomar Chuckerbuttee is part farmer and part under farmer thereof, under the following circumstances. That formerly he, Isser Chunder, held, as talookdar, the whole 15 annas share of talook Andarreeah, but having become, at one time, surety to Government for one Ram Lochun Mutteelall, on that person's being held liable by Government for a sum of money, a part of his, Isser Chunder's, property was sold to realise the claim.

That portion was the $3\frac{1}{2}$ annas share of the 15 annas portion of talook Andarreeah, and the purchaser thereof was Cally Kinker Roy, the defendant, who let his purchase in farm to Isser Chunder, appellant; and he, appellant, underlet that farm to Cally Coomar Chuckerbuttee, a defendant in this case, who also took a farm of the $11\frac{1}{2}$ annas share from Isser Chunder the appellant.

With regard to the plea urged by the appellant that Puddolochun Lushker's residence was not correctly stated by the plaintiffs, respondents, I find though it was not correctly stated, yet the evidence taken to prove the service of the notices of the institution of this suit, shows that those notices were put up at Puddo Lochun's fixed residence; and all legal forms having been observed, I do not think appellant's plea regarding the incorrect statement of that person's residence, need be further considered. I did not feel satisfied merely from the evidence of the witnesses, adduced by the plaintiffs, respondents, Bistennath Sirdar, Ram Persaud Sirdar, Chunder Sirdar, Govind Sirdar, and Kalloo Peramanic, that the appellant was the person at whose instigation the fictitious or pretended notice according to Regulation V. of 1812, was issued, or that the appellant was the person in possession of the 15 annas share of the talook of Andarreeah, when the process according to that Regulation was enforced, and the crops carried away. With a view to ascertain who was in possession of the 15 annas share of the talook, when the acts complained of by the plaintiffs, respondents, were committed, it was in my opinion necessary to peruse the notice under which the attachment and sale of the crops was made, and to take the evidence of the ameen who attached and sold the crops. This would show by whose order, or at whose desire, the attachment and sale were effected. The lower court not having called for the cubooleut, given by Cally Coomar Chuckerbuttee to the appellant, for the farm and under farm of the 15 annas share of the talook of Andarreeah, nor taken the ameen's evidence, or perused the papers connected with the attachment of the crops, this case was deferred to enable the appellant to file that cubooleut, and to have a subpœna served on the ameen and on the witnesses to the cubooleut. The papers relating to the distraint and sale were, at the same time, called for from the collector's office. The ameen in his evidence stated that being unable to go himself to attach and sell the crops, he deputed his mohurer. From the evidence of that person, Meer Asudally, who sold the crops according to the process issued under Regulation V. of 1812, it appears that the person who applied to have that process enforced was Muddoosooden Pyke, on behalf of Cally Coomar Chuckerbuttee, the farmer and

under farmer before mentioned. This appears also from the notice issued according to that Regulation, and from the petition of Mud-dossoodeen Pyke, and it does not appear from the ameen's mohurer's evidence that the appellant, Isser Chunder, took any steps, with regard to the attachment or sale of the crops. The cubooleut given by Cally Coomar Chuckerbuttee, for the farm and under farm of the 15 annas share of the talook of Andarrecah, has been filed, and proved by evidence showing that Cally Coomar, and not the appellant, was in possession of that estate when the acts complained of by the respondents were perpetrated. Isser Chunder Chowdry, the appellant, had no interest, during Cally Coomar's tenure, in the estate; and as it is proved that the latter and not Isser Chunder Chowdry, the appellant, enforced the process according to Regulation V. of 1812, I cannot see why the appellant should be held liable in this case. The witnesses of the plaintiffs, respondents, say that Isser Chunder Chowdry was present when the crops were taken away. Their evidence on this point is not satisfactory, for they say he was accompanied by upwards of one hundred persons, but make no mention of the names of any individual—speaking only of that of Isser Chunder Chowdry. I have not any doubt as to the possession of the land, on which the crops grew, being proved to have been in the hands of plaintiffs, respondents; for the evidence, a copy of a chitta obtained from the collector's office, the report of an ameen deputed by the moonsiff in this case, and a copy of a decision passed by the late court of appeal, shows it to have been in their possession. But the moonsiff's decision that Isser Chunder Chowdry, the appellant, is to be liable for acts proved to have been committed by Cally Coomar Chuckerbuttee, cannot be upheld, and I therefore decree this appeal. The costs in appeal to be defrayed by the respondents, excepting the petitioner Sumboo Chunder Chuckerbuttee.

THE 31ST AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of the Sudder Moonsiff, Mr. J. Weston, passed on the 23d of June 1846.

Sunker Sirdar, (former Defendant,) Appellant,

versus

Luckun Ghose and others, (former Plaintiffs,) Respondents.

THE appellant in this case was a defendant in the preceding case, described in the appeal of Isserchunder Chowdry. The appellant prays to have his expenses incurred in the lower court awarded him; the moonsiff, though he released him from liability to make good any portion of plaintiffs', respondents', claim, not having passed any order with regard to his costs. It is not in evidence that the appellant took any part in the unjust proceedings of the

farmer and under farmer, Callycoomar Chuckerbuttee; it only appears that the appellant was present at the distraint of respondents' crops in his, appellant's, capacity of village chowkeydar, to prevent disturbance and to take charge of the distrained crops. I do not consider that under these circumstances he should have been made a defendant or should have incurred any costs. I therefore decree this appeal.

THE 31ST AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of the Sudder Moonsiff, Mr. J. Weston, passed on the 23rd of June 1846.

Hullodhur Darra, (former Defendant,) Appellant,
versus

Luckun Ghose and others, (former Plaintiffs,) Respondents.

THE appellant was a defendant in the case described in the appeal of Isserchunder Chowdry *versus* these respondents. He appeals because the moonsiff did not award him his expences. From the tenor of this appellant's answer in the lower court, it appears to me that he aided, or connived at, the unjust proceedings of Callycoomar Chuckerbuttee; for the appellant says he was in the habit of cultivating the land (from whence Callycoomar fraudulently caused the crops to be cut and carried away,) as that person's ryots, and it has been clearly proved that the true proprietors and cultivators are the respondents. I can only regard this appellant's answer in the lower court as a connivance at Callycoomar's fraudulent conduct, and do not therefore think he ought to be exempt from the payment of his own costs. I therefore dismiss this appeal.

THE 31ST AUGUST 1846.

PRESENT: R. TORRENS, JUDGE.

Appeal from the decision of Mr. J. Weston, Sudder Moonsiff, passed on the 23d of June 1846.

Manoolla Khoonkar, (former Defendant,) Appellant,
versus

Luckun Ghose and others, (former Plaintiffs,) Respondents.

APPELLANT was a defendant in the case described in Isser Chunder Chowdry's appeal. The moonsiff did not, although he released him from all liability for respondents' claim, allow appellant his expences in his, the moonsiff's, court. He prefers this appeal, therefore, to get them awarded him. It is not proved that appellant had any thing to say to the unjust acts complained of as having been committed by Callycoomar Chuckerbuttee, and which were proved to have been committed by that person. I consider the appellant entitled to his costs, and decree the appeal.

